United States Court of Appeals

for the Second Circuit

APPENDIX

76-6175

10/19

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

-against-

COMMONWEALTH SECURITIES, INC., ROBERT DRUCKER, JULIUS KLEINMAN, DK & B MANAGEMENT, INC., MARY SHARPE and MARLANE KLEINMAN a/k/a MARCIA KLEIN,

Defendants-Appellants,

-and-

ZOLTAN GUTTMAN a/k/a LOU GOODMAN,

Defendant.

UNITED STATES COURT OF APPEALS
FILED
OCT 19 197
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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P/S

On Appeal from the United States District Court for the Southern District of New York

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JOINT APPENDIX

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MARCH 17, 1975

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

74 CIV. 1934

Jury demand date:

JUDGE [illegible]

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
SECURITIES & EXCHANGE COMMISSION vs COMMONWEALTH CHEMICAL SECURITIES, INC. 9-30-76 ROBERT DRUCKER, 9-30-76 JULIUS KLEINMAN, 9-30-76 DK & B MANAGEMENT, INC., 9-30-76 BENEFICIAL LABS, INC., 5-23-75 JOHN FELDMAN, 5-23-75 MARY SHARPE, 9-30-76 9-30-76 ZOLTAN GUTTMAN a/k/a LOU GOODMAN, MARLENE KLEINMAN a/k/a MARCIA KLEIN, 9-30-76 DOROTHY DRUCKER a/k/a 6-18-75 DOROTHY RUKASIN, CABOT SHAW, INC., 5-8-75 DAROLD MYLES SHIRWO, 5-2-75 GERALD WOLFF, 12-3-74 VINCENT CACCESSE, 3-21-75 MICHAEL REKOON 12-18-74	For plaintiff: S.E.C. 26 Federal Plaza, NYC 10007 264-1634 9-30-76 Bruce S. Bandes (Order of 8-19-76) 277 Park Ave. NYC 10017 838-8330 (Deft Zoltman Guttman) Rubenstein & Sherwood 601 Union Blvd, Totowa, N.J. 17512 (Deft Dorothy Drucker) 201-278-5215 For defendant: Feit & Ahrens 488 Madison Ave. NYC 371-6220 (Deft Vincent Caccesse, Jr.) Butowsky Schwenke & Devine 230 Park Ave., NYC 10017 725-5360 (Cert. Defts) Commonwealth Sec. R. Drucker J. Kleinman, DK & B Mgmt, M. Sharpe, Z. Guttman, a/k/a L. Goodman, M. Kleinman a/k/a M. Klein & ~~d. Drucker a/k/a~~ ~~D. Rukasin.~~ Stanley R. Goldstein 575 Lexington Ave., NYC 10022 751-8111 (Beneficial Labs, & John Feldman) J.R. Baer, 110 E. 42nd St. NYC 10017 697-5585 (Gerald Wolff)

STATISTICAL RECORD	COSTS
J.S. 5 mailed X	Clerk
J.S. 6 mailed ✓	Marshal
Basis of Action: To enjoin violations of S.E.C. Act of 1934, & to appoint Trustee, etc.	Docket fee
Action arose at:	Witness fees
	Depositions

DATE	NAME OR RECEIPT NO.	REC.	DISB.
	USA (S.E.C.)		

DATE	PROCEEDINGS	Date Order or Judgment Note
May 8-74	Filed complaint & issued summons.	
May 8-74	Filed affdvt & order for appointment to make personal service..Clerk	
May 21-74	Filed pltffs affdvt & notice of motion for preliminary injunction enjoining defts. Ret. 5-31-74.	
May 21-74	Filed affdvt of service by Jerold Judkowitz.	
May 21-74	Filed pltffs memo in support of motion for preliminary injunction & ancillary relief.	
May 24-74	Filed defts. (Beneficial) affdvt in opposition to pltfs. motion for preliminary injunction.	
May 24-74	Filed defts. interrogatories. (First Set)	
June 4-74	Filed ANSWER of defts (Cabot Shaw, Inc., D.M. Shirwo & Gerald Wolff to complaint.	
Jun. 4-74	Filed deft's affdvt in opposition to motion for preliminary injunct.	
Jun.4-74	Filed deft's motion for continuance & consolidation of hearing on preliminary injunction with trial of the action.	
Jun.4-74	Filed deft's (Cabor, Shaw Inc. & Shirwo & Wolff) points & authorities.	
Jun. 4-74	Filed deft's affdvt of service by mail.	
Jun.4-74	Filed (certain defts)affdvt in opposition to motion for preliminary injunction.	
Jun.4-74	Filed (certain defts) memo in opposition to preliminary inj. motion.	
Jun. 6-74	Filed memo endorsed on motion filed 5-21-74----The parties having consented to a temporary restraining order pending trial of this action on the merits, the within application for a preliminary injunction is withdrawn on consent. So ordered--MacMahon,J.--mailed notice.	
Jun.13-74	Filed stip & Order extending time for defts to answer complt to 6-12-74....MAC MAHON,J.	
Jun.14-74	Filed Stip & Order of TRO upon consent for purposes of maintaining status quo. Pending determinarion of pltffs request for ancillary relief, defts, et al will not transfer, etc. assign or dispose of any monies or other funds, except that nothing herein shall be construed to restrain payment of ordinary business expenses including payment of atty's fees. Court will retain jurisdiction of this matter for all purposes.....MAC MAHON,J. m/n	
Jun.14-74	Filed defts (Commonwealth), et al ANSWER to the complaint, & demand for jury trial as to ancillary relief.	
Jun.5-74	Filed ANSWER of defts (Beneficial, & J. Feldman)	SRG
Jun.10-74	Filed summons & affdvts of service of complt, etc....Clerk	
Jul.10-74	Filed pltffs answer to certain defts interrogs.	
Jul 18-74	Filed Stip. & Order that the hearing currently set for Aug 12-74 is adj. to Aug19,74, ...MacMahon, J.	
Jul.17-74	Filed defts (Commonwealth) & certain other defts interrogs to pltffs.	
Jul.17-74	Filed deft (Commonwealth's) notice to pltffs to produce.	
Jul.26-74	Filed pltffs notice to take deposotion of Robert Drucker.	
Aug.13-74	Filed affdvt of service by Robt. Benowitz of mailing of answer to interrogs. by S.E.C.	
Aug.13-74	Filed pltffs answer to deft (Beneficial & John Feldman's interrogs. (First Set)	
Aug 19-74	Filed transcript of record of proceedings dated MAY 21, 1974	
Aug.20-74	Filed pltffs answer to certain defts second set of interrogs.	
Aug.26-74	Filed affdvt of service by Bruce A. Werner.	
Oct.1-74	Filed pltffs notice to take deposition of Nellie Pyles.	
10-9-74	Filed pltff notice of deposition Gerald Wolff	

//////////////// Con't on Page #2

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Oct.11-74	Filed by certain defts affdvt & notice of motion to dismiss the complt. Ret. 10-18-74	
Oct.11-74	Filed by certain defts affdvt & notice of motion that pltff pay expense re deposition of Nellie Pyles & Gerald Wolff. Ret. 10-18-74.	
Oct.18-74	Filed pltffs affdvt in opposition to motion to dismiss & in support of motion for summary judgment.	
Oct.18-74	Filed pltffs statement of material facts re Rule 56 & 9 (g).	
Oct.18-74	Filed pltffs memo of law in support of Comm."s motion for summary judgment.	
Oct.18-74	Filed pltffs memo in opposition to defts motion for prepayment of expenses.	
Oct.18-74	Filed affdvt of Martin S. Cohen.	
Oct.18-74	Filed affdvt of service by Robert J. Benowitz.	
Oct.22-74	Filed Memo-End. on motion of 10-11-74. Motion denied following argument.....So Ordered, MAC MAHON,J. m/n	
Nov.6-74	Filed pltffs supplemental memo in opposition to defts motion to dismiss.	
Dec.3-74	Filed Consent Judgment of permanent injunction as to deft Gerald Wolff. He is permanently enjoined from obtaining money or property & making untrue statements as indicated, etc. Further Ordered that he shall make himself available & respond to any subpoena or notice to take deposition issued by the USDC, at the request of the S.E.C., as if he were still a party to this litigation, as indicated. This Court shall retain jurisdiction in this matter for all purposes.....MAC MAHON,J. JUDGMENT ENT. 12-3-74, Clerk m/n	
Dec.5-74	Filed pltffs notice to take deposition of deft Vincent Caccesse & deft Michael Rekoon.	
Dec.13-74	Filed by moving defts memo in support of motion to dismiss.	
Dec.13-74	Filed by moving defts reply memo in support of motion to dismiss.	
Dec.13-74	Filed Endorsement on motion of 10-11-74. Motion to dismiss the complt in all respects is denied.....MAC MAHON,J. m/n	
Dec.18-74	Filed Consent Judgment of permanent injunction as to Michael Rekoon, as indicated, & permanently enjoining any persons in active concert with him from violating any & all provisions of Sec. 37 of the Investment Co. Act of 1940.	

MAC MAHON

DATE	FILINGS—PROCEEDINGS	AMT. REPORTER'S EMOLUMENT RETURNED
Dec.18-74	(Order con't from Page #2). He shall make himself available & shall respond to any subpoena, or notice to take deposition issued by the USDC, SDNY, at the request of the SEC, etc. This Court shall retain jurisdiction in this matter for all pruposes..... MAC MAHON,J. Judgment Entered, 12-19-74, Clerk. m/n	
Jan.28-75	Filed by pltff affdvt of acknowledgment of certified copy of Consent Judgment of Permanent Injunction of 12-17-74.	
Feb.19-75	Filed ANSWER to complt by deft (Caccesse)	F
Feb.21-75	Filed notice of substitution of attys for Gerald Wolff.	
Mar.21-75	Filed Consent Judgment of permanent injunction as to deft Vincent Caccese, Jr. & those persons in active concert with him, are permanently enjoined re selling, etc. of units of Beneficial Labs, as indicated. He shall be available to respond to any subpoena, or notice to take deposition at the request of the SEC , as indicated. Court shall retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Ent. 3-24-75, Clerk m/n	
Apr.14-75	Filed affdvt & notice of motion permitting Butowsky, Schwenke & Devine to withdraw as counsel for deft Dorothy Drucker. Ret. 4-18-75.	
Apr.23-75	Filed affdvt by Dorothy Drucker in answer to affdvt of Michael C. Devi re motion of Butowsky, et al withdrawing as counsel.	
Apr.28-75	Filed Memo-End. on motion of 4-14-75. The within motion is granted on consent.....So Ordered, MAC MAHON,J	
Apr.30-75	Filed Memo-End. on unsigned Show Cause Order. Application denied following argument, this matter having been set for resumption of the trial on 4-29-75.....So Ordered, MAC MAHON,J m/n	
Apr.30-75	Filed request to enter appearance of att'y for deft Dorothy Drucker.	
Apr.30-75	Filed notice of appearance of atty for deft Dorothy Drucker.	
May 2-75	Filed Order & Consent Judgment of permanent injunction as to Darold Myles Shirwo permanently enjoining him as indicated, re securities, etc. He is to make himself available to & respond to any subpoen or notice to take deposition issued by the USDC, for the SDNY, at the request of the SEC, & failure to comply shall constitue contempt of court, etc. This Court shall retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-1-75, Clerk m/n	

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CIVIL DOCKET Page #4

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
May 5-75	Filed True Copy of Order from USCA that petition for a writ of mandamus having been filed together with a motion for a stay, upon consideration it is denied.....Clerk m/n			
5-8-75	Filed Consent Judgment & Order as to deft (Cabot Shaw, Inc.) of permanent injunction, permanently enjoining them re securities as indicated. Ordered, that they shall make themselves available re subpoena or notice to take deposition by the S.E.C. as if still a party to this litigation, & failure to comply shall constitute contempt of court. Court shall retain jurisidiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-8-75, Clerk			
May 14-75	Filed Stip between parties that as paragraphs enumerated said defts admit, contenst or deny knowledge or information as indicated.			
May 14-75	Filed Stip between parties, as indicated, paragraphs enumerated defts admit, contest or deny knowledge or information as indicated.			
May 14-75	Filed Memo of law by pltffs in opposition to defts motion to dismiss.			
May 23-75	Filed Order & Consent Judgment of permanent injunction as to deft (John Feldman), as indicated. Court to retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-27-75, Clerk.			
May 23-75	Filed Order & Consent Judgment of permanent injunction as to deft (Beneficial Labs, Inc.), as indicated. Court to retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-27-75, Clerk.			
5-29-75	Filed transcript of record of proceedings dated March 7 April 7, May 7, 1975			
6-16-75	Filed Stip & Order extending to 6-16-75 for pltff Comm's Findings of Fact, Conclusions of Law & Brief in Support, & to 6-26-75 for defts to file their Findings of Fact, Conclusions of Law & brief in support. Time for pltffs Reply Brief to be extended 7-7-75.....MAC MAHON,J			
6-16-75	Filed pltffs proposed findings of fact & conclusions of law.			
6-16-75	Filed pltffs memo of law in support of proposed findings of fact & conclusions of law.			

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CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
May 5-75	Filed True Copy of Order from USCA that petition for a writ of mandamus having been filed together with a motion for a stay, upon consideration it is denied.....Clerk m/n			
5-8-75	Filed Consent Judgment & Order as to deft (Cabot Shaw, Inc.) of permanent injunction, permanently enjoining them re securities as indicated. Ordered, that they shall make themselves available re subpoena or notice to take deposition by the S.E.C. as if still a party to this litigation, & failure to comply shall constitute contempt of court. Court shall retain jurisidiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-8-75, Clerk			
May 14-75	Filed Stip between parties that as paragraphs enumerated said defts admit, contenst or deny knowledge or information as indicated.			
May 14-75	Filed Stip between parties, as indicated, paragraphs enumerated defts admit, contest or deny knowledge or information as indicated.			
May 14-75	Filed Memo of law by pltffs in opposition to defts motion to dismiss.			
May 23-75	Filed Order & Consent Judgment of permanent injunction as to deft (John Feldman), as indicated. Court to retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-27-75, Clerk.			
May 23-75	Filed Order & Consent Judgment of permanent injunction as to deft (Beneficial Labs, Inc.), as indicated. Court to retain jurisdiction in this matter for all purposes.....MAC MAHON,J Judgment Entered, 5-27-75, Clerk.			
5-24-75	Filed transcript of record of proceedings dated March 17, April 2, May 1, 2, 1975			
6-16-75	Filed Stip & Order extending to 6-16-75 for pltff Comm's Findings of Fact, Conclusions of Law & Brief in Support, & to 6-26-75 for defts to file their Findings of Fact, Conclusions of Law & brief in support. Time for pltffs Reply Brief to be extended 7-7-75.....MAC MAHON,J			
6-16-75	Filed pltffs proposed findings of fact & conclusions of law.			
6-16-75	Filed pltffs memo of law in support of proposed findings of fact & conclusions of law.			

Con't on Page #5

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Le Jud
	Con't from Page #5	
	profits realized on the purchase & sale of Beneficial Securities from 12-20-71 ti the close of business on 3-2-73, the last trading date prior to suspension. The am't of such profits shall be paid by them to an escrow agent, to be appointed by t Court. The escrow agent shall use his best efforts to locate those members of the public who invested in Beneficial securities between 12-20-71 & 3-2-73 &, out of the sums deposited him, pay to each such person an amount to be determined by him to be equitable & fair. The foregoing opinion constitutes this court's findings of fact & conclusions of law. Settle an order & judgment, within 20 days frim the date of this opinion, accompanied by a memorandum supporting the computation of the amount to be disgorged by each deft..... MAC MAHON,J m/n	
4-19-76	Filed Stip & Order adjourning to 4-26-76 the date for settlement of a judgment.....MAC MAHON,J.	
4-28-76	Filed pltffs reply memo in support of order of disgorgement.	
5-11-76	Filed pltffs sur-reply memo in support of order of disgorgement.	
8-19-76	Filed Consent Order to change atty for deft (Zoltman Guttman). MAC MAHON,J.	
9-30 76	Filed Final Judgment of Permanent Injunction & Orders of Disgorgement & appointment of Escrow Agent.....MAC MAHON,J.....judgment ent. 9-30-76, Clerk. John H. Norris, 12 E. 41st St., NYC 10017 (Tel. 532-4289) appointed Escrow Agent & directed to post a Bond in the am't of $1,000. Court to retain jurisdiction. n/m	
9-29-76	Filed Memorandum #45180 & Order. See final judgment of this date.. MAC MAHON,J. n/m	
10-15-76	Filed by S.E.C. affdvt of service of Final Judgment of Permanent Inj., etc. on defts (Zoltan Guttman a/k/a Lou Goodman & Robert Drucker) on 10-13-76.	
10-15-76	Filed by S.E.C. affdvt of service on defts J. Kleinman, M. Kleinman a/k/a Marcia Klein, Commonwealth Chemical Sec. & DK & B Manag'mt) of Final Judgment of Permanent Inj., etc. on 10-10-76	
10-28-76	Filed defts-appellants notice that (Commonwealth Chemical, R. Drucker, J. Kelinman, DK & B Manag'mt, M. Sharpe, & M. Kleinman appeal to the USCA from the final judgment ent. 9-30-76. Copies sent To: Securities Exchange Commission, 26 Federal Plaza, New York, N.Y. 10007 — Stanley R. Goldstein, 575 Lexington Avenue, New York, N.Y. 10022 — Grossman Smaltz Graven & Perry, One Wilshire Bldg. - Suite 2420, Los Angeles, Calif. 90017 — Rubenstein & Sherwood, 601 Union Blvd., Totowa, New Jersey 07512	
11-26-76	Filed Deft-Appellant's notice of appeal to the USCA from the final judgment ent. 9-30-76. Copies sent to: S.E.C., 26 Federal Plaza, NYC 10007 — Stanley R. Goldstein, Esq., 575 Lexington Ave. NYC 10022 — Grossman Smaltz Graven & Perry, 1 Wilshire Bldg - Suite 2420, Los Angeles, Calif. 90017 — Rubenstein & Sherwood, 601 Union Blvd., Totowa, N.J. 07512	

DATE	PROCEEDINGS	Date Ord Judgment
	Schwenke & Devine, 230 Park Ave., New York, N.Y. 10017	
11-29-76	Filed Deft-Appellant's notice of appeal to the USCA from the final judgment ent. 9-30-76. Copies mailed to: S.E.C. 26 Federal Plaza, NYC 10007 Stanley R. Goldstein, Esq. 575 Lexington Ave. NYC 10022 Grossman Smaltz Graven & Perry 1 Wilshire Bldg. - Suite 2420 Los Angeles, Calif. 90017 Rubenstein & Sherwood 601 Union Blvd. Totowa, N.J. 07512 Schwenke & Devine 230 Park Ave. NYC 10017	
11-29-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.	
1-24-77	Filed Stip & Order that Zoltzn Guttman shall appear for a deposition etc.. XXXXX and that this stip shall have the force and effect of a court order granted... MacMahon,J.	
2-10-77	Filed pltffs affdvt & notice of motion under Rule 27(b) for leave to take depositions& request for production of documents of Robert C. Drucker, Julius & Marlane Kleinman, & Mary Sharpe. Ret. 2-25-77	
2-25-77	Filed Stip & Order adj. to 3-4-77, pltffs motion....MAC MAHON,J.	
3-7-77	Filed Stip & Order that plaff's Notice of Motion Ret: 3-4-77 is hereby withdrawn without prejudice...MacMahon,J.	
3-7-77	Filed Memo End. on Notice of Motion dtd 2-10-77.=Motion withdrawn. See stipulation & order dtd 3-4-77 So Ordered...MacMahon,J. M/N	
8-16-77	Filed Stip & Order that in full settlement & satisfication of the Order of Disgorgement entered against Guttman on 9-30-76 which requires that Guttman pay Sixteen Thousand One Hundred Fifth-Five Dollars plus six per cent interest from March 2,1977 to the date of payment....Etc...So Ordered.....MAC MAHON,J.	
8-22-77	Filed True Copy of U.S.C.A. Stipulation that the above apperal may be withdrawn without costs and without attys. fees and with prejudice..CLERK. U.S.C..A	
9-8-77	Filed deft's., Zoltan Guttman, Affidavit of acknowledgement.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- COMMONWEALTH CHEMICAL SECURITIES, INC. ROBERT DRUCKER JULIUS KLEINMAN DK & B MANAGEMENT, INC. BENEFICIAL LABS, INC. JOHN FELDMAN MARY SHARPE ZOLTAN GUTTMAN a/k/a LOU GOODMAN MARLANE KLEINMAN a/k/a MARCIA KLEIN DOROTHY DRUCKER a/k/a DOROTHY RUKASIN CABOT SHAW, INC. DAROLD MYLES SHIRWO GERALD WOLFF VINCENT CACCESSE MICHAEL REKOON Defendants.	74 Civil Action File No. [illegible] COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission") for its complaint herein alleges:

1. The defendants Commonwealth Chemical Securities, Inc., Robert Drucker and Julius Kleinman, and each of them, have been engaged and are about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e and

77q(a), Sections 10(b), 15(c) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b), 78o(c) and 78q(a) and Rules 17 C.F.R. 240.10b-5, 10b-6, 15c2-4, 17a-3 and 17a-4 thereunder; Sections 17(a), 17(d), 36(a), 37 and 48(a) of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. 80a-17(a), 80a-17(d), 80a-35(a), 80a-36, 80a-47(a) and Rule 17 C.F.R. 270.17d-1 thereunder; and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. 80b-6(1) and 80b-6(2).

2. The defendants Beneficial Labs, Inc. and John Feldman, and each of them, have been engaged and are about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 5 and 17(a) of the Securities Act, Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. The defendant John Feldman has been engaged and is about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 10(b) and 15(c) of the Exchange Act and Rules 10b-6 and 15c2-4 thereunder.

4. The defendants Mary Sharpe and Lou Goodman, and each of them, have been engaged and are about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and

Rule 10b-5 thereunder, and aiding and abetting violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

5. The defendants Marlane Kleinman and Dorothy Drucker, and each of them, have been engaged and are about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

6. The defendants Cabot Shaw, Inc., Darold Myles Shirwo, Gerald Wolff, Vincent Caccese and Michael Rekoon, and each of them, have been engaged and are about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and aiding and abetting violations of Sections 17(a), 36(a), 37 and 48(a) of the Investment Company Act.

7. The defendant DK & B Management, Inc. has been engaged and is about to engage, unless enjoined, in acts and practices which constitute and will constitute violations and aiding and abetting violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 36(a) and 37 of the Investment Company Act and Section

206(1) and (2) of the Advisers Act and aiding and abetting violations of Sections 17(a), 17(d) and 48(a) of the Investment Company Act and Rule 17d-1 thereunder.

8. The Commission brings this action to enjoin such acts and practices pursuant to the authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. 77t(b), Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e), Sections 36(a) and 42(e) of the Investment Company Act, 15 U.S.C. 80a-35(a), 80a-41(e) and Section 209(e) of the Advisers Act, 15 U.S.C. 80b-9(e).

9. This court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), Section 27 of the Exchange Act, 15 U.S.C. 78aa, Sections 36(a) and 44 of the Investment Company Act, 15 U.S.C. 80a-35(a) and 80a-43, and Section 214 of the Advisers Act, 15 U.S.C. 80b-14.

10. The Commission, pursuant to the authority contained in Sections 10(b), 15(c)(2), 17(a) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b), 78o(c)(2), 78q(a) and 78w(a) has prescribed Rules 17 C.F.R. 240.10b-5, 10b-6, 15c2-4, 17a-3 and 17a-4 thereunder and pursuant to the authority contained in Section 17(d) of the Investment Company Act, 15 U.S.C. 80a-17(d) has also prescribed Rule 17 C.F.R. 270.17d-1 thereunder. Said rules were in effect at all times mentioned herein and are now in effect.

11. The defendants, and each of them engaged in the acts and practices alleged herein in the Southern District of New

York and elsewhere from on or about December 20, 1971 to date.

DEFENDANTS

12. Commonwealth Chemical Securities, Inc. ("Commonwealth"), a New York corporation, is a broker-dealer registered with the Commission since February 28, 1969 and is located at 116 John Street, New York, New York 10038. Commonwealth is a member of the PBW Stock Exchange, Inc. and a member of the National Association of Securities Dealers, Inc. ("NASD"). Commonwealth is owned by Julius S. Kleinman and Robert C. Drucker.

13. Robert C. Drucker ("Drucker") resides at 263 Castle Drive, Englewood Cliffs, New Jersey, and is a principal shareholder, a vice-president and a director of Commonwealth. At the time of the violations alleged herein, Drucker was the president and a director of the Vanguard Fund, Inc., a publicly held registered investment company; the president and director of New York Hedge Fund, Inc., a publicly held registered investment company; president of Federated Equities Corp. which owns 48% of Commonwealth; an officer and director of defendant DK & B Management, Inc., a registered investment adviser. Drucker's brother-in-law, John Feldman, is the president and chairman of the board and principal shareholder of Beneficial Labs, Inc. Drucker is a stockholder in Beneficial Labs, Inc.

14. Julius Kleinman ("Kleinman") resides at 325 East 79th Street, New York, New York. He is the president, a director

and a principal shareholder of Commonwealth. At the time of the violations alleged herein, Kleinman was the vice-president and secretary of: Vanguard Fund, Inc., New York Hedge Fund, Inc., defendant DK & B Management, Inc., and Federated Equities Corp. Kleinman is a stockholder in Beneficial Labs, Inc.

15. Beneficial Labs, Inc. ("Beneficial") was incorporated under the laws of the State of New York on June 16, 1971. The principal office of Beneficial is located at 3959 Sally Lane, Oceanside, New York. Pursuant to Regulation A under Section 3(b) of the Securities Act, 15 U.S.C. 77c(b) and Rules 17 C.F.R. 230. 251-263, commencing December 20, 1971, Beneficial offered 100,000 units to the public at $2.25 per unit consisting of one share of common stock with one immediately separable and exercisable redeemable warrant to purchase an additional share of common stock at a price of $2.25 per share. The offering was underwritten on a best efforts, 50% all or none basis by defendant Commonwealth. By order dated April 18, 1974, the Commission temporarily suspended Beneficial's Regulation A exemption. Beneficial is in the retail and medicaid drug store business.

16. John Feldman ("Feldman") resides at 3959 Sally Lane, Oceanside, New York. He is the president, chairman of the board and principal shareholder of Beneficial Labs. Feldman is by education, a pharmacist. Feldman's brother-in-law is Drucker.

17. DK & B Management, Inc. ("DK & B") is a registered investment adviser to two registered investment companies, Van-

guard Fund, Inc. and New York Hedge Fund. The officers and directors of DK & B are Drucker and Kleinman. The corporation is located at the same address as Commonwealth.

18. Dorothy Drucker a/k/a Dorothy Rukasin resides at 263 Castle Drive, Englewood Cliffs, New Jersey and is Drucker's wife. She is a shareholder of Beneficial.

19. Marlane Marcia Kleinman a/k/a Marcia Klein resides at 325 East 79th Street, New York, New York and is Kleinman's wife. She is a stockholder in Beneficial. Formerly, she was a registered representative at Commonwealth.

20. Mary C. Sharpe ("Sharpe") resides at 222 East 35th Street, New York, New York. She is employed by Commonwealth as its bookkeeper. She is a Beneficial shareholder.

21. Zoltan Guttman a/k/a Lou Goodman ("Goodman") resides at 1563 56th Street, Brooklyn, New York. He is Commonwealth's cashier and a shareholder of Beneficial.

22. Vincent Edward Caccesse ("Caccesse") resides at 46 85th Street, Brooklyn, New York. At all times relevant herein, Caccesse was a trader and registered representative at A.C. Kluger & Co., Inc., a registered broker-dealer at that time.

23. Michael Steven Rekoon ("Rekoon") resides at 342 Carolina Street, Clark, New Jersey. Rekoon was a trader at Amherst Securities Corp. ("Amherst"), a registered broker-dealer, from March, 1972 to September, 1972, at which time Amherst was liquidated. Rekoon then gained employment with Flaks, Zaslow & Co., Inc.

("Flaks"), then a registered broker-dealer, and began to trade Beneficial for Flaks.

24. Cabot Shaw, Inc. ("Cabot-Shaw"), located at 9171 Wilshire Boulevard, Beverly Hills, California, is a broker-dealer registered with the Commission since February 27, 1970. Prior to February 1, 1973 Cabot-Shaw was known as Securities Unlimited of Beverly Hills. On March 22, 1974, the Commission instituted public administrative proceedings against Cabot-Shaw and Darold Myles Shirwo, its president, based on violations of the registration and anti-fraud provisions of the federal securities acts in connection with trading in the securities of Environmental Devices, Inc.

25. Gerald Wolff ("Wolff") resides at 14314 Burbank Boulevard, Van Nuys, California, and during the relevant period herein was a registered representative and trader at Cabot-Shaw, located in Beverly Hills, California.

26. Darold Myles Shirwo ("Shirwo") resides at 2259 Coldwater Canyon, Beverly Hills, California, and is president of and a registered principal at Cabot-Shaw, located in Beverly Hills, California.

DESCRIPTION OF AFFILIATED INVESTMENT COMPANIES

27. New York Hedge Fund, Inc. ("Hedge"), (formerly Berkley Dean Special Fund), is a management, open-end, non-diversified investment company registered with the Commission pursuant to

Section 8 of the Investment Company Act. As of December 31, 1972, Hedge had 69,747 shares of common stock outstanding, held by approximately 266 members of the public. As of March 2, 1973, Hedge had total net assets of approximately $370,000. As of April 11, 1974, Hedge had a total net asset value of $53,622. At the time of the violations alleged herein, Drucker and Kleinman were officers and directors of Hedge. Hedge is located at 116 John Street, New York, New York.

28. Vanguard Fund, Inc. ("Vanguard") is a management, open-end, diversified investment company, registered with the Commission pursuant to Section 8 of the Investment Company Act. As of December 31, 1972 Vanguard had 416,163 shares of common stock outstanding held by approximately 2,067 members of the public. As of March 2, 1973 Vanguard had total net assets of approximately $1,185,000. As of April 11, 1974, Vanguard had a total net asset value of $415,953. At the time of the violations alleged herein, Drucker and Kleinman were officers and directors of Hedge. Hedge is located at 116 John Street, New York, New York.

FIRST CAUSE OF ACTION

Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 Thereunder, 17 C.F.R. 240.10b-5 Fraud In Connection With The Offer And Sale of Securities.

29. The plaintiff repeats and realleges by reference each and every allegation contained in paragraph 1 through 28 herein.

30. During the period from on or about December 20, 1971 and continuing to date hereof, defendants Drucker, Kleinman, Commonwealth, DK & B, Feldman, Beneficial, Sharpe, Goodman, Caccesse, Rokoon, Shirwo, Wolff, Cabot-Shaw, Dorothy Drucker and Marlane Kleinman violated and aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in that they, singly and in concert, by use of the means and instruments and instrumentalities of transportation and communication in interstate commerce and of the mails, in connection with the offer, sale, purchase and effectuation of transactions in the common stock, units and warrants of Benefidal, employed devices, schemes and artifices to defraud, obtained money and property by means of and made untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and engaged in acts, practices and courses of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of such securities. As part of such acts, practices and courses of business, the respective defendants engaged in the following activities as alleged herein:

(a) On or about December 20, 1971 defendant Beneficial commenced a best efforts public offer and sale of 100,000 units of Beneficial, underwritten by Commonwealth, through the utilization of a notification and offering circular filed with the Commission and distributed to the public purportedly exempt from the registration provisions of the Securities Act under Regulation A of the Securities Act, 17 C.F.R. 230.251-263. As per the offering circular distributed to the public, a minimum of 50,000 units had to be sold by March 19, 1972, in order to successfully sell the issue and effect a closing of the issue. On or about March 10, 1972 defendants Drucker, Kleinman, Feldman, Beneficial and Commonwealth purportedly closed the issue and notified the Commission that 50,650 units had been sold to the public. In actuality, the minimum of 50,000 units required to be sold were not sold to the public by March 10, 1972, the date of the alleged closing.

(b) With respect to the activities described in paragraphs 30 and 30(a), defendants Drucker, Kleinman and Commonwealth allegedly sold at least 9500 Beneficial units, which were not paid for as of the date of the alleged closing, by placing such units in nominee accounts.

(c) Defendants Drucker, Kleinman and Commonwealth failed to promptly deposit all subscribers funds in a separate bank account and defendants Drucker, Kleinman, Feldman, Beneficial

and Commonwealth failed to return all subscribers (public purchasers) funds after failing to sell the minimum number of Beneficial units required to be sold to the public as per the offering circular.

(d) Defendants Sharpe and Goodman created and utilized nominee accounts in order to participate in the Beneficial offering.

(e) Defendants Drucker, Kleinman, and Commonwealth caused trading to commence in the Beneficial units, warrants and common stock in the over-the-counter market at prices in excess of the original offering price of the units at a time when the offering was not completed. Defendants Beneficial and Feldman permitted this and other activities and thus participated in and aided and abetted the commission of those violations alleged herein.

(f) Defendants Commonwealth, Drucker, Kleinman, DK & B, Dorothy Drucker, Marlene Kleinman, Caccesse, Rekoon, Cabot-Shaw, Wolff and Shirwo effected transactions in the Beneficial common stock, warrants and units which involved no change in beneficial ownership and entered orders for the purchase and sale of the Beneficial common stock, warrants and units with the knowledge that orders of substantially the same size, at substantially the same time and at substantially the same price had been or would be entered by or for the same or different parties.

(g) Defendants Drucker, Kleinman, Commonwealth, DK & B, Dorothy Drucker, Marlane Kleinman, Caccesse, Rekoon, Cabot-Shaw, Wolff and Shirwo effected a series of transactions in the Beneficial common stock, warrants and units creating actual or apparent active trading in such securities and raising the price of such securities, for the purpose of inducing the purchase or sale of the Beneficial securities by others.

(h) Defendants Drucker, Kleinman and Commonwealth dominated and controlled the over-the-counter market in the Beneficial common stock through the continuous utilization of their own nominee and controlled accounts, the accounts and nominee accounts of defendants Dorothy Drucker and Marlane Kleinman, and the nominee and controlled accounts of defendants Sharpe and Goodman, in order to create apparent active trading in the after-market and artificially raise and maintain the actual market price of the Beneficial common stock.

(i) Defendants Drucker, Kleinman and Commonwealth dominated and controlled the over-the-counter market in the Beneficial units through the continuous utilization of their own nominee and controlled accounts and the accounts and nominee accounts of defendants Dorothy Drucker and Marlane Kleinman and the nominee and controlled accounts of defendants Sharpe and Goodman, in order to create apparent active trading in the after-market and artificially raise and maintain the actual market price of the Beneficial units.

defendant Beneficial's warrants and common stock at artificially

(j) Defendants Drucker, Kleinman and Commonwealth dominated and controlled the over-the-counter market in the Beneficial warrants through the continuous utilization of their own nominee and controlled accounts and the accounts and nominee accounts of defendants Dorothy Drucker and Marlane Kleinman and the nominee and controlled accounts of defendants Sharpe and Goodman, in order to create apparent active trading in the after-market and artificially raise and maintain the actual price of the Beneficial warrants.

(k) In connection with the activities alleged in paragraphs 30(h) - 30(j), defendants Marlane Kleinman and Dorothy Drucker permitted and caused purchases and sales of Beneficial units, warrants and common stock in their own accounts and in their nominee accounts for the purpose of aiding and abetting such activities.

(l) Defendants Drucker, Kleinman and Commonwealth utilized the National Quotation Bureau "pink sheets" to create the appearance of active trading by causing inflated bid and ask quotations to be entered therein in the Beneficial units, common stock and warrants, in order to increase and maintain the prices in all three Beneficial securities.

(m) Defendants Drucker, Kleinman and Commonwealth effected a series of put and call transactions through the utilization of a nominee account in order to create apparent active trading in the Beneficial common stock for the purpose of

inducing others to purchase the Beneficial common stock, while concomittantly reducing the supply of the public float of the Beneficial common stock available for trading in the over-the-counter market.

(n) Defendants Drucker, Kleinman and Commonwealth engaged in a series of "swap" transactions with Delphi Capital Corporation, then a registered broker-dealer, whereby, through the utilization of various nominee and controlled accounts and as part of a joint transaction with Vanguard Fund, they effectively "parked" thousands of Beneficial units with the Rittenhouse Fund, a registered investment company, in order to create the appearance of active trading, artificially raise and maintain the price of the Beneficial units and reduce the size of the public float in the Beneficial units, warrants and common stock.

(o) Defendants Drucker, Kleinman and Commonwealth, in order to effect the "swap" transactions described in paragraph 30(n), fraudulently used other broker-dealers as intermediaries so as to mask the violative nature of such transactions, increase and maintain the price and create apparent active trading in the Beneficial units, warrants and common stock.

(p) Defenants Drucker, Kleinman, Commonwealth, Cabot-Shaw, Shirwo and Wolff engaged in a series of "swap" transactions whereby defendants Drucker, Kleinman and Commonwealth, through the utilization of a nominee account, "parked" thousands of

Beneficial warrants and common stock with defendant Cabot-Shaw, in order to create the appearance of active trading, artificially raise and maintain the price and reduce the size of the public float with respect to the Beneficial securities.

(q) Defendants Drucker, Kleinman, Commonwealth, DK & B, Shirwo, Wolff, Cabot-Shaw, Rekoon and Caccesse engaged in a series of transactions which caused Hedge Fund and Vanguard Fund, two registered investment companies controlled by defendants Drucker, Kleinman and DK & B, to purchase and sell thousands of Beneficial warrants and shares of common stock at artificially inflated prices. These transactions were intended to, and in fact did, artificially raise and maintain the price, create the appearance of active trading and reduce the size of the public float of the Beneficial units, warrants and common stock.

(r) Defendants Drucker, Kleinman, Commonwealth, DK & B, Shirwo, Wolff, Rekoon and Caccesse used defendant Cabot-Shaw, broker-dealers at which Rekoon and Caccesse were then employed and other broker-dealers, as intermediaries, in order to effect the transactions described in paragraph 30(q), and to mask the violative nature of the trades, increase and maintain the price and create apparent active trading in the Beneficial units, warrants and common stock.

(s) Because of the activities described in paragraphs

30(a) through 30(r), defendant Beneficial's exemption from registration for its securities pursuant to Section 3(b) of the Securities Act is void.

(t) By virtue of the allegations described in paragraphs 30(a) through 30(s), defendants Drucker, Kleinman, Commonwealth, DK & B, Beneficial, Feldman, Goodman, Sharpe, Marlane Kleinman, Dorothy Drucker, Cabot-Shaw, Shirwo, Wolff, Rekoon and Caccesse, directly and indirectly, singly and in concert, violated and aided and abetted violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

SECOND CAUSE OF ACTION

Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-6 thereunder, 17 C.F.R. 240.10b-6. Bidding For Or Purchasing Securities While Participating In The Distribution Of Such Securities.

31. The plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 30 herein.

32. From on or about March 10, 1972 to the date hereof, defendants Drucker, Kleinman and Commonwealth violated and defendant Feldman aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder in that,

Commonwealth, while participating as an underwriter in a distribution of the original issue of the Beneficial units, and defendants Drucker and Kleinman, directly and indirectly, by the use of the means and instrumentalities of interstate commerce and of the mails, bid for and purchased for accounts in which they had a beneficial interest, units, warrants, and common stock of defendant Beneficial, at a time when said securities were the subject of a distribution while they had not completed their participation in such distribution.

THIRD CAUSE OF ACTION

Section 15 (c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 17 C.F.R. 240.15c2-4 - Failure To Promptly Deposit And Return Funds.

33. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 32 herein.

34. From on or about December 20, 1971 to the date hereof, defendant Commonwealth violated and defendants Drucker, Kleinman, and Feldman aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder, in that they engaged in a fraudulent, deceptive and manipulative act and practice by accepting the proceeds from the sales of the Beneficial units during the course of the public distribution, which was made on a 50% or none basis, and failed to promptly deposit the money or other consideration received in a separate bank account, as agent

or trustee for the persons who had the beneficial interests therein until at least fifty per cent of the offering had been sold, and, when such contingency did not occur, they failed to promptly transmit or return such funds to the persons entitled thereto.

FOURTH CAUSE OF ACTION

Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 C.F.R. 240.17a-3 and 17a-4 Thereunder - "Bookkeeping Rules".

35. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 34 herein.

36. From on or about December 20, 1971 to the date hereof, defendant Commonwealth violated and defendants Drucker, Kleinman, Goodman and Sharpe aided and abetted violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder in that Commonwealth failed to make, keep current and accurate, and preserve certain of its books and records including but not limited to its blotters, ledgers, stock record, customer ledger and order tickets as required by the Commission's Bookkeeping Rules, to reflect the true beneficial owners of certain accounts.

FIFTH CAUSE OF ACTION

Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c) - Offer, Sale And Delivery After Sale of Unregistered Securities.

37. Plaintiff repeats and realleges by reference each and

every allegation contained in paragraphs 1 through 36 herein.

38. From on or about December 20, 1971 and continuing to the date hereof, defendants Drucker, Kleinman, Commonwealth, Feldman and Beneficial, and each of them, singly and in concert, directly and indirectly, have been and are offering for sale and selling securities and aiding and abetting in the sale of such securities, namely the Beneficial common stock, units and warrants, and these defendants have been and are, directly and indirectly, making use of the means and instruments of transportation and communication of interstate commerce and the mails to sell and offer to sell such securities, and have been and are now causing such securities to be carried through the mails and interstate commerce by means and instruments of transportation for the purpose of sale and delivery after sale.

39. No registration statement is on file or in effect with the Commission under the Securities Act with respect to the Beneficial common stock, units and warrants.

40. By reason of the foregoing, the defendants Drucker, Kleinman, Commonwealth, Feldman and Beneficial have, directly and indirectly, violated Sections 5(a) and 5(c) of the Securities Act.

SIXTH CAUSE OF ACTION

Sections 17(a) and 48(a) of the Investment Company Act, 15 U.S.C. 80a-17(a), 80a-47(a) - Affiliated Transactions.

41. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 40 herein.

42. From on about September 19, 1972 and continuing to the date hereof, defendants Commonwealth, Drucker and Kleinman violated and defendants DK & B, Caccesse, Rekoon, Cabot-Shaw, Wolff and Shirwo aided and abetted violations of Section 17(a) of the Investment Company Act and defendants Drucker, Kleinman and Commonwealth violated and defendants DK & B, Caccesse, Rekoon, Cabot-Shaw, Wolff and Shirwo aided and abetted violations of Section 48(a) of the Investment Company Act in that;

(a) On or about September 19, 1972 defendants Drucker, Kleinman, DK & B and Caccesse caused defendant Commonwealth to sell 8,000 shares of Beneficial common stock to Hedge Fund for an aggregate purchase price of $73,000 by using a registered broker-dealer where defendant Caccesse was employed as a trader, as an intermediary between Commonwealth and Hedge Fund.

(b) On or about August 7, 1972, defendants Drucker, Kleinman, DK & B and Rekoon caused Vanguard Fund to purchase 7,000 shares of Beneficial common stock, for a total purchase price of $49,262.50, from a nominee account of defendant Drucker with both accounts located, and the trade executed, at a registered broker-dealer where defendant Rekoon was employed as a trader.

(c) On or about September 22, 1972, defendants Commonwealth, Drucker, Kleinman, DK & B and Rekoon caused Vanguard Fund and Hedge Fund to purchase 3500 and 3600 shares of Beneficial common stock, respectively, from the trading account of a registered

broker-dealer at which defendant Rekoon was employed as the trader. Of the 7100 shares sold by the registered broker-dealer to Vanguard Fund and Hedge Fund, at least 3100 and 1100 shares were purchased by the registered broker-dealer, acting as an intermediary, from the personal accounts of defendants Drucker and Kleinman, respectively.

(d) On or about October 5, 1972, defendants Drucker, Kleinman, DK & B and Rekoon caused defendant Commonwealth to sell 3000 Beneficial warrants to Hedge Fund at $14-3/8 per warrant by using three registered broker-dealers, one of which employed defendant Rekoon as a trader, as intermediaries between Commonwealth and Hedge Fund.

(e) On or about January 18, 1973, defendants Commonwealth, Drucker, Kleinman, DK & B and Rekoon caused Hedge Fund to sell 300 shares of Beneficial common stock at $23-3/4 per share to a nominee account of defendants Drucker and Kleinman at Commonwealth, using the registered broker-dealer which employed defendant Rekoon as a trader, as an intermediary between Hedge Fund and such nominee.

(f) On or about February 27, 1973 defendants Commonwealth, DK & B, Drucker, Kleinman, Shirwo and Wolff caused Hedge Fund to sell 3000 shares of Beneficial common stock at $11-1/2 per share to Commonwealth by using defendant Cabot-Shaw as an intermediary between Hedge Fund and Commonwealth.

(g) On or about February 26, 1973 Commonwealth, Drucker, Kleinman, DK & B, Cabot-Shaw, Shirwo and Wolff caused Vanguard Fund to purchase 5000 shares of the common stock of Environmental Devices, Inc. ("EDI") from Commonwealth by using defendant Cabot-Shaw as an intermediary between Vanguard Fund and Commonwealth.

43. By virtue of the facts alleged in paragraphs 42(a), (d), (f) and (g) herein, defendant Commonwealth, an affiliated person of Hedge Fund and Vanguard Fund, acting as principal, unlawfully and knowingly sold securities to or purchased securities from Hedge Fund and/or Vanguard Fund in violation of Section 17(a) of the Investment Company Act.

44. By virtue of the facts alleged in paragraphs 42(a), (d), (f) and (g) herein, defendant Commonwealth violated Section 48(a) of the Investment Company Act in that defendant Commonwealth, directly and indirectly, caused to be done acts through or by means of another person which were unlawful for defendant Commonwealth to do under Section 17(a) of the Investment Company Act.

45. By virtue of the facts alleged in paragraphs 42(b), (c) and (e) herein, defendants Drucker and Kleinman, affiliates of Vanguard Fund and Hedge Fund, acting as principals, unlawfully and knowingly sold securities to or purchased securities from Vanguard Fund and/or Hedge Fund in violation of Section 17(a) of the Investment Company Act.

46. By virtue of the facts alleged in paragraphs 42(b), (c) and (e) herein, defendants Drucker and Kleinman violated Section 48(a) of the Investment Company Act in that defendants Drucker and Kleinman, directly or indirectly, caused to be done acts through or by means of another person which were unlawful for defendants Drucker and Kleinman to do under Section 17(a) of the Investment Company Act.

47. By virtue of the facts alleged in paragraphs 42(a), (b), (c), (d), (e), (f) and (g) herein, defendants Drucker, Kleinman and DK & B aided and abetted violations of Section 17(a) of the Investment Company Act.

48. By virtue of the facts alleged in paragraphs 42(a), (b), (c), (d), (e), (f) and (g) herein, defendants Drucker, Kleinman and DK & B aided and abetted violations of Section 48(a) of the Investment Company Act.

49. By virtue of the facts alleged in paragraphs 42(c) and (e) herein, defendant Commonwealth aided and abetted violations of Section 17(a) of the Investment Company Act.

50. By virtue of the facts alleged in paragraphs 42(c) and (e) herein, defendant Commonwealth aided and abetted violations of Section 48(a) of the Investment Company Act.

51. By virtue of the facts alleged in paragraph 42(a) herein, defendant Caccesse aided and abetted a violation of Section 17(a) of the Investment Company Act.

52. By virtue of the facts alleged in paragraph 42(a) herein, defendant Caccesse aided and abetted a violation of Section 48(a) of the Investment Company Act.

53. By virtue of the facts alleged in paragraphs 42(b),(c) (d) and (e) herein, defendant Rekoon aided and abetted violations of Sections 17(a) of the Investment Company Act.

54. By virtue of the facts alleged in paragraphs 42(b), (c) (d) and (e) herein, defendant Rekoon aided and abetted violations of Section 48(a) of the Investment Company Act.

55. By virtue of the facts alleged in paragraphs 42(f) and (g) herein, defendants Cabot-Shaw, Wolff and Shirwo aided and abetted violations of Section 17(a) of the Investment Company Act.

56. By virtue of the facts alleged in paragraphs 42(f) and (g) herein, defendants Cabot-Shaw, Wolff and Shirwo aided and abetted violations of Section 48(a) of the Investment Company Act.

SEVENTH CAUSE OF ACTION

Section 17(d) Of the Investment Company Act, 15 U.S.C. 80a-17(d) and Rule 17d-1, 17 C.F.R. 270. 17d-1 Thereunder - Joint Transactions Between Investment Companies And its Affiliates.

57. Plaintiff repats and realleges by reference each and every allegation contained in pragraphs 1 through 56 herein.

58. From on or about October 31, 1972 and continuing to date hereof, defendant Commonwealth, aided and abetted by defendants Drucker, Kleinman and DK & B, violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, in that Drucker, Kleinman and DK & B caused Commonwealth, acting as principal, to participate in, and effect transactions, in connection with a joint arrangement in which Vanguard Fund was a participant, without seeking or obtaining an order of the Commission approving such transactions.

EIGHTH CAUSE OF ACTION

Section 37 of the Investment Company Act, 15 U.S.C. 80a-36 - Wilful Conversion of Investment Company's Assets.

59. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 58 herein.

60. From on or about December 20, 1971 and continuing to the date hereof, defendants Drucker, Kleinman, Commonwealth and DK & B, aided and abetted by defendants Cabot-Shaw, Shirwo, Wolff, Caccesse and Rekoon, violated and aided and abetted violations of Section 37 of the Investment Company Act in that Drucker, Kleinman, Commonwealth and DK & B unlawfully abstracted and unlawfully and wilfully converted to their own use and to the use of others, the moneys, funds, securities, property and assets of Vanguard Fund and Hedge Fund by causing Vanguard Fund and Hedge Fund to purchase thousands of

defendant Beneficial's warrants and common stock at artificially inflated prices in order to effectuate their manipulative scheme to artificially raise and maintain the prices and reduce the public float of the Beneficial common stock, units and warrants and to ultimately assure themselves enormous profits at the expense of Vanguard Fund, Hedge Fund and others.

61. By virtue of the facts set forth in paragraphs 59 and 60 herein, defendants Drucker, Kleinman, Commonwealth and DK & B violated and defendants Cabot-Shaw, Shirwo, Wolff, Caccesse and Rekoon aided and abetted violations of Section 37 of the Investment Company Act.

NINTH CAUSE OF ACTION

Section 206(1) and (2) of the Advisors Act, 15 U.S.C. 80b-6(1) and 80b-6(2) - Defrauding Investment Companies.

62. The Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 61 herein.

63. From on or about September 19, 1972 and continuing to the date hereof, defendant DK & B violated and defendants Drucker and Kleinman aided and abetted violations of Section 206(1) and (2) of the Investment Advisers Act of 1940 in that they employed devices, schemes and artifices to defraud Vanguard Fund and Hedge Fund and their shareholders, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon Vanguard Fund and Hedge Fund.

TENTH CAUSE OF ACTION

Section 36(a) of the Investment Company Act, 15 U.S.C. 80a-35(a) - Breach of Fiduciary Duty.

64. Plaintiff repeats and realleges by reference each and every allegation contained in paragraphs 1 through 63 herein.

65. From on or about September 19, 1972 and continuing to the date hereof defendants Drucker and Kleinman, as officers, directors, and members of the advisory boards of Vanguard Fund and Hedge Fund and defendant DK & B, as the investment adviser to Vanguard Fund and Hedge Fund, violated and defendants Commonwealth, Cabot-Shaw, Shirwo, Wolff, Caccesse and Rekoon aided and abetted violations of Section 36(a) of the Investment Company Act in that defendants Drucker, Kleinman and DK & B engaged in, and defendants Commonwealth, Cabot-Shaw, Shirwo, Wolff, Caccesse and Rekoon participated in, acts and practices which constituted a breach of fiduciary duty involving personal misconduct with respect to Vanguard Fund and Hedge Fund.

* * * *

The defendants and each of them, unless enjoined, will continue to engage in such acts and practims as alleged herein.

WHEREFORE, the plaintiff Securities and Exchange Commission respectfully demands:

I. A preliminary injunction and a permanent injunction, enjoining defendants Commonwealth, Drucker, Kleinman, Feldman, DK & B, Beneficial, Sharpe, Goodman, Cabot-Shaw, Shirwo, Wolff, Caccesse, Rekoon, Dorothy Drucker and Marlane Kleinman, their officers, directors, agents, servants, employees, attorneys, nominees, successors, assigns and those persons in active concert or participation with them, and each of them, from, directly and indirectly, making use of the mails or means and instruments and instrumentalities of interstate commerce in and in connection with the offer to sell, sale, offer to purchase and purchase of the common stock, warrants and units of Beneficial, its subsidiaries, affiliates, successors or assigns, or any other securities, to obtain money or property by engaging in acts, practices or courses of business which operate as a fraud or deceit upon purchasers and prospective purchasers, sellers or prospective sellers of such securities or making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, including but not limited to, among other things:

(1) the prompt deposit of subscribers funds into a special and/or escrow account, in connection with the sale of the securities of any issuer of securities;

(2) the prompt transmittal or return of all funds to the persons entitled thereto in connection with a contingency offering of securities in the event the contingency does not occur;

(3) the placing of securities of any issuer in nominee or ficticious accounts;

(4) the effecting of transactions in any securities which involve no change in beneficial ownership or the entering of orders for the purchase and sale of any security with knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price would be entered by or for the same or different parties;

(5) the effecting of transactions in any security creating actual or apparent active trading in such securities and raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others.

(6) the purchase or sale of securities from or to an affiliated investment company, and

(7) the nature, development and extent of the operations and business of any issuer of securities; and

any other statements of similar purport and object.

II. A preliminary injunction and a permanent injunction

enjoining defendants Commonwealth, Drucker, Kleinman, Feldman and Beneficial, their officers, directors, trustees, nominees, agents, employees, servants, successors, attorneys, assigns and those persons in active concert or participation with them, and each of them, directly and indirectly, from:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer or sell through the use or medium of any prospectus or otherwise, the common stock, warrants and units of Beneficial or securities of its subsidiaries, affiliates, successors or assigns, or any other securities:

(1) unless and until a registration statement has been filed with the Securities and Exchange Commission as to such securities; or (2) while a registration statement filed with the Securities and Exchange Commissi as to such securities is the subject of a refusal order or stop order of the Securities and Exchange Commission; or (3) while (prior to the effective date of the registration statement) there is a public proceeding or examination under Section 8 of the Securities Act of 1933, as amended, 15 U.S.C. 77h.

(b) making use of any means or instruments of transportation and communication in interstate commerce or of the mails to sell the common stock, warrants and units

of Beneficial or securities of its subsidiaries, affiliates, successors or assigns, or any other securities, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

(c) carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

Provided, however, that nothing in the foregoing portion of the requested injunction shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended, 15 U.S.C. 77e.

III. A preliminary injunction and a permanent injunction enjoining defendants Drucker, Kleinman, Commonwealth and Feldman, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those persons in active concert or participation with them, and each of them, from, agreeing to participate or participating in a distribution

of any security, directly and indirectly, by making use of the means or instrumentalities of interstate commerce, or the mails, to bid for or purchase for any account in which they, or any of them, have a beneficial interest. the common stock, warrants or units of Beneficial, or any other security, or any security of the same class and series as the security which is the subject of a distribution in which said persons have a beneficial interest or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right until after they or any of them have completed their participation in such distribution.

IV. A preliminary injunction and a permanent injunction enjoining defendants Commonwealth, Drucker, Kleinman, Goodman, Sharpe and their officers, directors, agents, servants, employees, attorneys, nominees, successors, assigns and those persons in active concert or participation with them, and each of them, directly and indirectly, from failing to make and keep current and accurate and preserve such records, ledgers, correspondence, memoranda, papers, books and other records as required by Rules 17 CFR 240.17a-3 and 17a-4 promulgated under Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a)., while a registered broker-dealer in securities, or while associated as principal or an employee, of a registered broker-dealer in securities.

V. A preliminary injunction and a permanent injunction

enjoining defendants Commonwealth, Drucker, Kleinman and Feldman, and its officers, directors and the agents, employees, servants, attorneys, nominees, successors, assigns and those in active concert or participation with them, and each of them, directly and indirectly, from accepting any part of the sales price of any security being distributed, while Commonwealth is acting as a broker-dealer, and/or Drucker, Kleinman and Feldman are participatin with a broker-dealer, in any distribution of the common stock, warrants and units, of Beneficial or any other securities other than a firm committment underwriting, unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all or none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs; (a) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (b) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for

the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

VI. A preliminary injunction and a permanent injunction enjoining defendants Drucker, Kleinman, Commonwealth, DK & B, Cabot-Shaw, Shirwo, Wolff, Rekoon and Caccesse, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those persons in active concert with them and each of them, directly or indirectly, in the absence of any applicable statutory exemption, from, while in the position of an affiliated person or promotor of a principal underwriter for a registered investment company (other than a company of the character described in Section 12(d)(3)(a) and (b) of the Investment Company Act), or an affiliated person of such person, promotor, or principal underwriter, acting as principal, (1) knowingly selling or aiding and abetting the sale of any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (a) securities of which the buyer is the issuer, (b) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (c) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof; (2) knowingly purchasing or aiding and

abetting a purchase from such regisrered company, or from any company controlled by such registered company, any securi ty or other property (except securities of which the seller is the issuer); unless such person has filed an application with the Commission for an order exempting such a proposed transaction and the application is granted.

VII. A preliminary injunction and a permanent injunction, enjbining defendart s Commonwealth, Drucker, Kleinman and DK & B, their officers, directors, agents, servants, employees, attorneys, nominees, successors, assigns and those persons in active concert with them, and each of them, directly or indirectly, from, while in the position of an affiliated person of, or principal underwriter for any registered investment company (other than a company of the character described in Section 12(d)(3)(a) and (b) of the Investment Company Act) or an affiliated person of such a person or principal underwriter, acting as principal, participati in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit sharing plan in which such registered company, or a company controlled by such registered company, is a participant, unless an application regarding such joint enterprise, arrangement or profit sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to

such adoption or modification if not so submitted.

VIII. A preliminary injunction and a permanent injunction enjoining defendants, Drucker, Kleinman, DK & B, Commonwealth, Cabot-Shaw, Wolff, Shirwo, Caccesse and Rekoon, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those in active concert with them, and each of them, directly or indirectly, from causing to be done any act or thing through or by means of any other person which it would be unlawful for such other person to do under the provisions of the Investment Company Act or any rule, regulation or order thereunder.

IX. A preliminary injunction and a permanent injunction, enjoining defendants Drucker, Kleinman, Commonwealth, DK & B, Cabot-Shaw, Wolff, Shirwo, Caccesse and Rekoon, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those in active concert with them, and each of them, directly or indirectly, from stealing, unlawfully abstracting, unlawfully and wilfully converting to their own use or to the use of others, or embezzeling any of the moneys, funds, securities, credits, property or assets of any registered investment company.

X. A preliminary injunction and a permanent injunction, enjoining defendants Drucker, Kleinman and DK & B, their officers, directors, agents, servants, employees, attorneys, nominees, successors, assigns and those persons in active concert with them and each of them, directly or indirectly, from

(1) serving as an officer, director, member of any advisory board, investment adviser, or depositor of any registered investment company, or (2) serving as principal underwriter to any registered investment company, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

XI. A preliminary injunction and a permanent injunction, enjoining defendants Cabot-Shaw, Commonwealth, Wolff, Shirwo, Rekoon and Caccesse, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those in active concert with them and each of them, directly or indirectly, from aiding and abetting any officer, director, member of an advisory board, investment adviser or depositor of any registered investment company or principal underwriter of any registered investment company if such registered company is an open-end company, unit investment trust or a face-amount certificate company, from engaging in any act or practice constituting a breach of fidiciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts.

XII. A preliminary injunction and a permanent injunction, enjoining defendants Drucker, Kleinman, DK & B, and Commonwealth, their officers, directors, agents, employees, servants, attorneys, nominees, successors, assigns and those persons in active concert or participation with them, and each of them, directly and

indirectly, from using the mails or any means or instrumentality of interstate commerce to employ any device, scheme, or artifice to defraud any client or prospective client of an investment adviser, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client of an investment adviser.

XIII. An Order requiring defendants Drucker, Kleinman, Commonwealth, DK & B, Dorothy Drucker, Marlane Kleinman, Sharpe and Goodman to disgorge all profits which enured to these defendants due to their illegal activities in connection with the offer and sale of the Beneficial securities. and to deliver said disgorged profits to an independent trustee or fiscal agent appointed by the Court.

XIV. An Order appointing an independent trustee or fiscal agent to collect and preserve the disgorged profits of defendants Drucker, Kleinman, Commonwealth, DK & B, Dorothy Drucker, Marlane Kleinman, Sharpe and Goodman and to apply such monies toward making restitution to Vanguard Fund, Hedge Fund and any other entity or person who suffered financial losses as a result of these defendants illegal manipulative activities in connection with the offer and sale of Beneficial securities.

XV. Such other and further relief as the nature of the case may require and the Court may deem just and proper.

Respectfully submitted,

WILLIAM D. MORAN
Regional Administrator

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OF COUNSEL:
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Lawrence J. Toscano

Dated: New York, New York
May 8, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, : 74 Civ. 1984 LFM

-against- : ANSWER

COMMONWEALTH CHEMICAL SECURITIES, INC., et al., :

Defendants. :

- x

JURY TRIAL DEMANDED AS TO ANCILLARY RELIEF AND MATTERS OF LAW

Defendants Commonwealth Chemical Securities, Inc., Robert Drucker, Julius Kleinman, DK & B Management, Inc., Mary Sharpe, Zolton Guttman a/k/a Lou Goodman, Marlane Kleinman a/k/a Marcia Klein and Dorothy Drucker a/k/a Dorothy Rukasin, by their attorneys, Butowsky, Schwenke & Devine, for their answer to the complaint herein allege:

1. Deny each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 30 (preamble), 30(b), 30(c), 30(d), 30(e), 30(f), 30(g), 30(h), 30(i), 30(j), 30(k), 30(l), 30(m), 30(n), 30(o), 30(p), 30(q), 30(r), 30(s), 30(t), 32, 34, 36, 38, 40, 42(a), 42(b), 42(c), 42(d), 42(e), 42(f), 42(g), 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 60, 61, 63, and 65.

2. Deny each and every allegation contained in paragraph 12, except admit the first two sentences and that Drucker and Kleinman each own 26% of the stock of Commonwealth.

3. Deny each and every allegation contained in paragraph 13, except admit the first, third, and fourth sentences and that Drucker was a director of Vanguard Fund and New York Hedge Fund prior to March, 1973; that Drucker was President of Vanguard Fund and New York Hedge Fund prior to November, 1973 (the last 8 months limited to purely administrative duties); that Drucker is, and has been, President of Federated Equities Corp., which owns 48% of Commonwealth; and that Drucker formerly was an officer and director of DK & B Management, Inc.

4. Deny each and every allegation contained in paragraph 14, except admit the first and last sentences and that Kleinman was an officer of Vanguard Fund and New York Hedge Fund prior to November, 1973 (the last 8 months limited to purely administrative duties); that Kleinman is, and has been, an officer of Federated Equities Corp.; and that Kleinman formerly was an officer of DK & B Management, Inc.

5. Deny that they have knowledge or information sufficient to form a belief as to the allegations of the first two sentences of paragraph 15.

6. Deny each and every allegation contained in paragraph 17, except admit that DK & B Management, Inc. has an office at 116 John Street, New York, N. Y.

7. Admit paragraph 21, except deny that Guttman is Commonwealth's cashier.

8. Deny that they have knowledge or information sufficient to form a belief as to the allegations of paragraphs 23, 24, 25, 26, and 39.

9. Deny each and every allegation contained in paragraphs 27 and 28, except admit the first three sentences of each, deny knowledge or information sufficient to form a belief as to the allegations of the fourth sentences, and refer to paragraphs 3 and 4 above.

10. With respect to paragraphs 29, 31, 33, 35, 37, 41, 57, 59, 62, and 64, repeat their answers to the paragraphs therein repeated.

11. Deny each and every allegation contained in paragraph 30(a), except refer to the offering circular for its contents, and admit that the offering was closed on March 10, 1972, with notification thereof being given to plaintiff.

FIRST DEFENSE

12. The complaint fails to state a claim.

SECOND DEFENSE

13. Plaintiff has assumed primary jurisdiction of matters alleged in the complaint.

THIRD DEFENSE

14. Plaintiff is guilty of laches and undue delay in the commencement of this action.

FOURTH DEFENSE

15. This Court lacks subject matter jurisdiction as to the non-injunctive portions of the relief demanded.

FIFTH DEFENSE

16. Plaintiff lacks capacity and standing to sue as to the non-injunctive portions of the relief demanded.

SIXTH DEFENSE

17. Defendants answering herein acted in good faith and on the advice of counsel.

WHEREFORE defendants demand that the complaint be dismissed.

BUTOWSKY, SCHWENKE & DEVINE

By Michael C. Devine
A Member of the firm
Attorneys for above-name defendants
230 Park Avenue
New York, New York 10017
(212) 725-5360

MR. DEVINE: There is no objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit No. 6 was received in evidence.)

Q Mr. Judkowitz, I now show you what has been marked as Plaintiff's Exhibit 7.

Mr. Judkowitz, would you identify that for the Court?

A This is a trading schedule for Beneficial Labs, Inc. for the units from March 10, 1972, through January 10, 1973.

Q What period of time is covered by the schedule, Mr. Judkowitz?

A March 10, 1972 --

THE COURT: He just told us.

Q Who, if anybody, prepared this document?

A I did.

Q Can you recall when you prepared the document?

A Approximately June to August of 1973.

Q What, if any, materials, Mr. Judkowitz, did you rely on to prepare this document?

A I used original order tickets, where available, from the brokers. If they weren't available, I used confirmation statements or comparisons.

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Q From where did you obtain the documents that were the source of Plaintiff's Exhibit 7?

A From broker-dealers involved in the trading of the security,Beneficial Labs units.

Q Did there ever come a time when you retained documents which are part of the source material for Plaintiff's Exhibit 7 from defendant Commonwealth Chemical Securities?

A Would you repeat the question, please?

MR. BENOWITZ: Would the reporter please read the question?

(Question read.)

A Yes.

Q And do you have these documents in court with you today?

A Yes, I do.

MR. BENOWITZ: May I enter Plaintiff's Exhibit 7 in evidence.

MR. EPSTEIN: May I have a very short voir dire on this, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. EPSTEIN:

Q Are all the documents that were used to prepare

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this chart in court or just the ones from the defendant Commonwealth Chemical Securities?

A I believe they are all in court today.

Q You know or you believe?

A They are in court today.

Q I also note that you have names of purchasers and sellers on this chart.

A That is correct.

Q Did those names come from the order tickets?

A Yes, they did.

Q And you said in some cases you weren't able to obtain order tickets so you used other documents?

A That is correct.

Q What were those other documents?

A Either confirmation statements which are sent to the retail customer or comparisons which are sent to other brokers.

MR. EPSTEIN: Your Honor, I would like to object on the ground that at the present time there is no way for me to ascertain the accuracy of that document without comparing it with the original source documents.

THE COURT: Overruled.

MR. DEVINE: Your Honor, we would not make the same objection. We have no objection to it. We would

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like an opportunity to examine it with reference to the source documents and later state any objection to its accuracy which we may have.

THE COURT: Where are the documents?

MR. SIEGEL: Here, your Honor.

THE COURT: They aren't all that voluminous. Let's mark them.

MR. BENOWITZ: Your Honor, the plaintiff would also like to have Mr. Judkowitz identify two other charts which are similar in nature.

THE COURT: Just a minute. Let's mark these exhibits. What is the problem here?

MR. SIEGEL: I am putting them together, your Honor.

THE COURT: As one exhibit.

xx (Plaintiff's Exhibit No. 8 was marked for identification.)

THE COURT: We won't put them in evidence. They are too voluminous. Check them during the lunch hour.

Let's proceed.

BY MR. BENOWITZ:

Q Mr. Judkowitz, I now hand you what has been marked as Plaintiff's Exhibit 9 --

THE COURT: Did you prepare that document?

THE WITNESS: Yes.

THE COURT: Are the papers on which you based it in the courtroom?

THE WITNESS: Yes, they are.

THE COURT: Offer it in evidence.

Would you give the same answers as to that exhibit?

THE WITNESS: Yes.

THE COURT: Offer that.

MR. DEVINE: May I have one question on voir dire?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. DEVINE:

Q With respect to Plaintiff's Exhibits 9 and 10, Mr. Judkowitz, did you inquire of every registered broker-dealer in the country with respect to transactions involving Beneficial Labs' securities prior to preparing these charts?

A If I may explain how I did it, I first went to the market makers who were listed in the National Quotation Bureau's pink sheets from the beginning of the aftermarket trading until the time of the preparation, and from these documents -- the major market makers may have then traded with other broker-dealers who were not market makers --

and from those documents from the market makers I then went to the other brokers.

Q In other words, you did not check any transactions which any broker-dealer may have had in that security other than broker-dealers who were either market makers or who had a transaction with the market makers, is that correct?

A That is correct.

Q And how many broker-dealers were there in those two categories?

A Approximately twenty. I can't be sure.

Q And how many broker-dealers are there in the country registered with the Securities and Exchange Commission, your employer?

A I don't know the figure.

Q Do you know whether it is a thousand or 20,000?

MR. SIEGEL: Objection, your Honor. It would be irrelevant and there is no way for this witness to know the answer.

MR. DEVINE: This chart purports to be a collection of all the transactions in a particular security, and he is testifying that he checked at most 20 broker-dealers to find out their transactions. If there are 20,000 broker-dealers in the country, I submit that this is not an accurate chart.

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THE COURT: Do you object to it?

MR. DEVINE: Yes, you. Honor, on that basis.

THE COURT: Didn't you tell me that all the documentary evidence on which you based that chart is in the courtroom?

THE WITNESS: That is correct.

THE COURT: Overruled.

xxx (Plaintiff's Exhibit 9 was received in evidence.)

MR. EPSTEIN: May we have the documents offered in evidence and connected up with the particular chart?

THE COURT: Yes, do that, please.

I will take a recess until 2:00 o'clock. Do your homework.

MR. DEVINE: May we hand up our brief at this point? It came down from our office.

(Luncheon recess.)

...

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PLAINTIFF'S PRELIMINARY INJUNCTION
EXHIBIT 3 - BENEFICIAL LABS, INC.
OFFERING CIRCULAR

(pp. 60a - 76a)

AMENDMENT TO OFFERING CIRCULAR OF BENEFICIAL LABS, INC. DATED DECEMBER 20, 1971

The within Offering was terminated on March 8, 1972. As of such date, 50,650 Units had been sold and paid for and the Company received net proceeds of $94,033.75.

The date of this Offering Circular is December 20, 1971, as amended March 8, 1972.

OFFERING CIRCULAR

SECURITIES AND EXCHANGE COMMISSION
RECEIVED
MAR 14 1972
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

100,000 UNITS

BENEFICIAL LABS, INC.

Each Unit consisting of one share of Common Stock (Par Value, $.01 per share) and one Redeemable Stock Purchase Warrant

and

100,000 shares of Common Stock underlying Redeemable Stock Purchase Warrants

THE PURCHASE OF THESE SECURITIES INVOLVES A HIGH DEGREE OF RISK
See "Risk Factors"

Offered in Units, each consisting of one share of Common Stock with one immediately separable and exercisable Redeemable Warrant ("Warrant") to purchase one additional share of Common Stock at a price of $2.25 per share from the date hereof to December 20, 1973. Warrants will be quoted and traded on the basis of the right to purchase one share of Common Stock at the effective Warrant exercise price. Outstanding Warrants are redeemable by the Company at any time at the redemption price of $.25 per Warrant, upon thirty days written notice to the Warrant holder. The The Warrants cease to be exercisable on the fifth day prior to the date fixed for redemption.

Prior to this offering, there has been no public market for the securities of the Company and there is no assurance that such a market will exist upon completion of this offering. The initial public offering price has been determined by negotiations between the Company and the Underwriter.

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

	Offering Price to Public(1)	Underwriting Discounts or Commissions and Expenses(2)	Proceeds to Issuer(3)
Per Unit Minimum	$2.25	$.395	$1.855
Per Unit Maximum	$2.25	$.335	$1.915
Total Minimum	$112,500.00	$19,750.00	$92,750.00
Total Maximum	$225,000.00	$33,500.00	$191,500.00
Per Share Underlying Warrants	$2.25	None	$2.25
Total -- Shares Underlying Warrants	$225,000	None	$225,000
Grand Total -- Including Underlying Shares	$450,000	None	$416,500

(1) The Underwriter has agreed to act as agent for the Company to offer 50,000 Units on a best efforts all or none basis and to offer 50,000 Units on a best efforts basis. All funds received from subscribers will be placed in a special account entitled Commonwealth Chemical Securities Inc., as trustee for the subscribers of Beneficial Labs, Inc., at the American Bank and Trust Company, New York, N.Y. The Units will be offered for a period of 30 days from the date of this Offering Circular (which period may be extended for an additional 60 days). If less than 50,000 Units are sold within the time period specified above, all funds from subscribers will be refunded in full without interest. The "maximum" assumes the sale of all of the Units offered hereby and the "minimum" assumes the sale of only 50,000 Units. (See UNDERWRITING.) In the event 50,000 Units or more are sold within the initial offering period, the Offering Circular will be amended to disclose the number of Units sold. The Company represents that it will keep the Offering Circular current until either all the Warrants issued pursuant to the offering are exercised or December 20, 1973, whichever occurs earlier.

(Continued on Page 2)

(Continued from Page 1)

(2) Includes $11,250 ($.225 per Unit) cash commission and $8,500 ($.17 per Unit) non-accountable expense allowance if 50,000 Units are sold. For each additional Unit sold by the Underwriter, it will receive an additional cash commission of $.225 (a maximum of $22,500 in the event that all Units are sold) and an additional non-accountable expense allowance of $.05 per Unit (a maximum of $11,000 in the event all Units are sold). To the extent that such amount exceeds the actual expenses of the Underwriter, it may be deemed additional compensation.

(3) Before deducting expenses payable by the Company of approximately $14,000 representing legal ($6,500), accounting ($500), printing ($5,000), and miscellaneous ($2,000), exclusive of the Underwriter's expense allowance referred to above. The proceeds to the Company after commissions and expenses will not exceed $177,500 if all Units are sold and $78,750 if only 50,000 Units are sold. (See APPLICATION OF PROCEEDS concerning additional proceeds to be received by the Company upon sale of the shares underlying the Warrants, which may amount to a maximum of $225,000.

This offering involves:

(a) Special risks concerning the Company. For information concerning such risks see "Risk Factors to be Considered", page 4.

(b) Immediate substantial dilution of the book value of the shares from the public offering price. For information concerning such dilution, see "Dilution", page 6.

COMMONWEALTH CHEMICAL SECURITIES, INC.

116 John Street

New York, New York 10038

The date of this Offering Circular is December 20, 1971

IN CONNECTION WITH THIS OFFERING THE UNDERWRITER MAY EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMPANY'S UNITS, COMMON STOCK AND WARRANTS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THERE IS PRESENTLY NO PUBLIC MARKET FOR THE SECURITIES OF THE COMPANY.

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THE COMPANY

Beneficial Labs, Inc. (the "Company") was incorporated under the laws of the State of New York on June 16, 1971.

The principal office of the Company is located at 3959 Sally Lane, Oceanside, New York 11572.

The Company intends to engage in the ownership and operation of pharmacies or to operate drug departments in larger units such as department stores and supermarkets.

The Company at present intends to conduct its activities principally in New York State; however, it may expand its operation to neighboring states as favorable opportunities present themselves.

INTRODUCTORY STATEMENT

Risk Factors to be Considered

In analyzing this offering, prospective investors should carefully consider, among other factors, the following:

1. The Company has not engaged in any business to date and consequently, no assurance can be given that the Company will achieve any success in its proposed operations or that profits will be derived from such proposed operations.

2. The Company has entered into no leases or agreements for the operation of pharmacies or drug departments. It can, therefore, give no assurance that it will be able to obtain such agreements or leases on favorable terms. The office of the Company is located in the residence of Mr. John Feldman, the President and a Director of the Company. There is no assurance that the Company will be able to obtain new offices on favorable terms.

3. Although Mr. John Feldman, the President of the Company, is a licensed pharmacist, he has limited experience in managing drug stores and no experience in operating a business venture. Mr. Feldman will initially be the only full-time officer of the Company.

4. The Company has entered into a three year employment agreement with Mr. John Feldman at an annual salary of $15,000 commencing on the date that the Company acquires an operating property. All or part of such salary will be paid out of the proceeds of this offering if future operating revenues prove insufficient.

5. As more fully described under PROPOSED BUSINESS OF THE COMPANY, the Company will be subject to intense competition from much larger chain drug store operations which have greater financial resources to devote to advertising and promotion. In addition, such larger chains may be in a better position to obtain prime locations. The Company will also be subject to strong competition from independent drug stores.

6. As more fully described under PROPOSED BUSINESS OF THE COMPANY, the intended operations of the Company will be subject to supervision and licensing by the New York State Board of Pharmacy.

In the event that operations of the Company are commenced in other states, it will be subject to similar licensing and supervision by agencies of such other states. The Company will also have to comply with the statutes and rules enforced by the Federal Food and Drug Administration.

7. While the Company believes that the proceeds that would be realized by it from this offering if only the minimum number of Units (50,000) were sold would be sufficient for it to commence business on a small scale, note should be taken of the fact that if all of the Units offered hereby are not in fact sold, the potential of the Company may be severely limited. Accordingly, notwithstanding any consummation of the offering of the minimum number of Units offered hereby, or even the maximum number of such Units, no representation can be made by the Company as to future revenues of the Company, as to return on investment, or as to the ultimate ability of the enterprise to continue.

8. There is no assurance that the Company will not require additional financing and, if so, that such additional financing will be available when and if the Company requires it. This may have a substantial adverse effect on the Company's future operations.

9. At present, there is no market for the Company's securities and there is no assurance that a regular trading market for the shares of Common Stock and Warrants will develop at the conclusion of the offering. The offering price of the Units was arbitrarily determined by negotiations between the Company and the Underwriter. Such offering price has no relationship to the present book value of the Company's outstanding shares of Common Stock or to any established criteria of value.

10. It should be noted that the $2.25 exercise price of the Warrants should not be construed as an indication of the value of the shares offered hereby, such exercise price having been arbitrarily determined. Furthermore, recent sales of the Company's shares were made to its present shareholders as follows: 10,000 shares at $.75 per share; 25,000 at $.01 per share and 215,000 shares for services rendered, as compared with the offering price of $2.25 per share.

11. No dividends have been paid to date and it is unlikely that dividends will be paid in the foreseeable future.

12. Commonwealth Chemical Securities, Inc. commenced business on March 17, 1969, and has acted as an underwriter only in one public offering.

13. If all the Units offered hereby are sold, the present shareholders will own 250,000 shares of Common Stock which will represent approximately 71% of the outstanding Common Stock. If only the minimum of 50,000 Units offered hereby are sold, the present shareholders will own approximately 83% of the outstanding Common Stock. If all the Units offered hereby are sold and all of the Warrants are exercised, the present shareholders will own approximately 56% of the outstanding Common Stock. Since the Common Stock does not have cumulative voting

rights, the present shareholders will be able to elect all of the directors and thereby have sole control of the Company's business operations.

Dilution

1. If all the Units offered hereby are sold, the present shareholders of the Company will own 250,000 shares or approximately 71% of the outstanding shares for which they will have contributed an aggregate equity of $7,750, and the public will own 100,000 shares or approximately 29% of the outstanding shares for which it will have paid $225,000. In addition, if all of the 100,000 Warrants are exercised, the present shareholders will own 250,000 shares or approximately 56% of the outstanding shares for which they will have contributed an aggregate equity of $7,750 and the public will own 200,000 shares or approximately 44% of the outstanding shares for which they will have paid $450,000.

2. If only the minimum of 50,000 Units is sold, the present shareholders will own approximately 83% of the outstanding shares and the public ownership, accordingly, will be reduced to as little as 17%, for which it will have paid $112,500. In addition, if all of the 50,000 Warrants are exercised, the present shareholders will own approximately 71% of the outstanding shares for which they will have contributed an aggregate equity of $7,750 and the public will own 100,000 shares or approximately 29% of the outstanding shares for which it will have paid $225,000.

3. As at October 31, 1971, the Company had a net tangible asset value of $4,750 or $.02 per share. Assuming the sale of all of the Units offered hereby, and giving effect to the payment of commissions and all expenses of the offering, the Company will have 350,000 shares outstanding with a net tangible asset value of $182,500 or $.52 per share; accordingly, the present shareholders' equity will increase $.50 per share from $.02 per share to $.52 per share, at no cost to them, while the public equity, represented by the shares purchased pursuant to this offering, will decrease $1.73 per share from $2.25 per share to $.52 per share. The aggregate increase in the present shareholders' equity will amount to approximately $125,000 and the decrease in the public equity will amount to approximately $173,000.

4. In the event that only the minimum of 50,000 Units is sold, 300,000 shares of Common Stock will then be outstanding, and the Company will have a net tangible asset value of $83,500 or $.28 per share; accordingly, the present shareholders' equity will increase $.26 per share from $.02 per share to $.28 per share and the public equity will decrease $1.97 from $2.25 to $.28 per share.

5. Assuming the sale of 100,000 Units and the exercise of 100,000 Warrants, the present shareholders' equity will increase $.89 per share from $.02 per share to $.91 per share. Assuming the sale of 50,000 Units and the exercise of 50,000 Warrants, the present shareholders' equity will increase $.54 per share from $.02 per share to $.56 per share at no cost to them while the public equity will decrease $1.69 from $2.25 per share to $.56 per share.

CAPITALIZATION

The following table sets forth the capital structure of the Company, as of October 31, 1971, and as adjusted to reflect the sale of the Units offered hereby.

Title of Class	Authorized	Outstanding	To Be Outstanding
Convertible Preferred Stock, par value $.01 per share	400,000 shs.	None	None
Common Stock, par value $.01 per share	600,000 shs.	250,000 shs.	350,000 shs. (1) (2)
Redeemable Warrants	100,000 wts.	None	100,000 wts. (1)

(1) Assumes the sale of all 100,000 Units being offered hereby.

(2) Does not include up to 100,000 shares issuable upon exercise of Redeemable Warrants.

APPLICATION OF PROCEEDS

After deducting the Underwriter's commissions and expense allowance and the Company's expenses of this offering, the net proceeds to be received by the Company if the minimum of 50,000 Units is sold will be approximately $78,750, and if all the Units are sold, will be approximately $177,500.

The number and size of the pharmacies intended to be owned and operated by the Company will depend upon the amount of the net proceeds realized from this offering. No assurance can be given that the Company will not be required to spend additional amounts in connection with its proposed business or that, if it is, in fact, required to spend such additional amounts, such funds will be available to the Company. It is intended to use the net proceeds as follows: approximately $25,000 will be allocated to working capital, including officer's salary and general overhead expense and the balance of $53,750 (in the event 50,000 Units are sold) and $152,500 (in the event 100,000 Units are sold) will be used to make cash downpayments on the purchase of pharmacies. To the extent that Warrants are exercised, as to which there can be no assurance, proceeds received from such exercise which could amount to a maximum of $225,000 will also be used to make cash downpayments on the purchase of pharmacies. As more fully set forth under PROPOSED BUSINESS OF THE COMPANY, the number and size of the pharmacies which the Company can acquire is directly related to the amount of money realized from the sale of the Units and the exercise of the Warrants.

Proceeds that are not immediately used for the above-specified purposes will be temporarily invested in government securities, commercial paper, bank certificates of deposit or other similar type securities, until needed.

PROPOSED BUSINESS OF THE COMPANY

The Company intends to own and operate pharmacies and to operate drug departments in larger units such as department stores and supermarkets. The Company's proposed operation will include the formulation and sale of ethical or prescription drugs, patent medicines, cosmetics and toiletries, and also may include related items sold in certain pharmacies such as appliances, toys, stationery, greeting cards and soda and lunch departments.

The Company also intends to sell in its pharmacies certain items which it will purchase at wholesale and bottle and sell under its own label. Such items include, but are not limited to, aspirin, vitamins, cough syrups, cosmetics and toiletries. The Company believes that through wholesale purchasing of these items, it will be able to offer them under its private label to the public at lower prices than those charged for nationally advertised brands. The private label brands of the Company will encounter high competition from the nationally advertised brands which will also be offered by the Company and, accordingly, the Company can give no assurances as to the amount of public acceptance, if any, of its private label brands. Unless the private label brands of the Company meet with sufficient consumer acceptance, this aspect of the Company's proposed operation may prove unprofitable and will either have to be severely limited or curtailed.

The Company presently does not own or lease any property nor has it entered into any agreements for the operation of drug departments in larger units.

Rather than establishing new pharmacies, the Company initially proposes to acquire existing operations and is presently attempting to purchase suitable pharmacies on favorable terms. No agreements have been reached nor are any formal negotiations for the purchase of pharmacies presently in progress. There can be no assurance that the Company will be able to consummate agreements to acquire existing pharmacies on favorable terms.

The purchase of an operating pharmacy will generally require a cash downpayment of between 25% to 50% of the purchase price and the balance in promissory notes payable over a period of five to ten years.

Even if all the Units offered hereby are sold, the limited financial resources of the Company will enable it only to purchase a few existing pharmacies. The number of such pharmacies will depend upon the amount of cash downpayments required. Moreover, since a large portion of the purchase price would be represented by promissory notes, the inability of the Company to meet the payments required by such promissory notes would probably result in its being unable to continue operations.

Although the Company intends to initially acquire existing pharmacies as favorable opportunities present themselves, the Company may, in the future, establish new pharmacies as independent units or in larger units such as department stores or supermarkets. Generally, the establishment of a drug department in a larger unit would involve the leasing of space from such unit pursuant to a lease which would, in most instances, provide for a minimum rental plus a percentage of sales.

Licensing and Control

The operation of drug stores and drug departments in the State of New York is under the control and supervision of the State Board of Pharmacy pursuant to Article 137 of the Education Law of the State of New York. The powers of the State Board of Pharmacy include, but are not limited to, the following:

1. Licensing of pharmacists;

2. Regulating the practice of pharmacy;

3. Regulating the sale of drugs, poisons and cosmetics;

4. Regulating the employment of apprentices and other employees in pharmacies;

5. Regulating and controlling the sale, character and standard of drugs, poisons and cosmetics compounded or dispensed in the State.

Accordingly, the Company's proposed operation, which will include the establishment of drug stores and drug departments and the packaging of certain patent drugs, medicines, vitamins and cosmetics under its own label, will be subject to the strict supervision and control of the State Board of Pharmacy.

The Company will also be required to pay certain licensing fees, which are not significant.

In the event that the Company commences operations in other states, it will be subject to similar stringent supervision by agencies of such other states.

The Company will also be subject to regulation by the Federal Food and Drug Administration.

The Company does not know of any proposed Federal or state legislation which would adversely affect its proposed operations. However, the investor should be aware that legislation may be enacted which would have an adverse affect upon the Company and its affairs.

Competition

The Company will be faced with very strong competition in its proposed operations. There are many chain drug stores with much greater financial resources which are in a position to expend large sums in the advertising and promotion of their operations. In addition, such large chain drug stores are able more easily to obtain favorable locations through lease or purchase. The Company will also meet with strong competition from neighborhood drug stores.

In addition, certain labor unions and health plans presently own or are planning to establish their own drug stores and may be able to sell the same items as the Company at substantially lower prices.

Many of the products which may be sold by the Company may also be purchased in supermarkets, department stores and other types of specialty stores.

Offices

The Company's principal office is presently located in the home of Mr. John Feldman, for which the Company pays no rental. In the event that the proposed operations of the Company prove successful, the Company proposes to establish new offices. There is no assurance that the Company will be able to acquire new offices on favorable terms. The Company presently does not have any specific plans in this regard.

MANAGEMENT

Officers and Directors

The names and addresses of the officers and directors of the Company and their stock holdings as of the date hereof are as follows:

Name and Address	Office	No. of Shares
John Feldman 3959 Sally Lane Oceanside, LI, NY	President, Treasurer and Director	215,000
Myron Finkelstein 225 West 34 Street New York, N. Y.	Vice-President, Secretary and Director	15,000
Stanley Goldstein 930 East 7th Street Brooklyn, New York	Director	3,000
Edward Feldman 162 E. Belleville Ave. Bloomfield, N. J.	Director	3,000
All officers and directors as a group		236,000

Mr. John Feldman may, for purposes of the Securities Act of 1933, as amended, be deemed to be a "promoter" of the Company. Mr. Feldman is a licensed pharmacist in the States of New York and Illinois. He received his Ph.G. degree from the Brooklyn College of Pharmacy in 1959 and since such time has been engaged in the practice of pharmacy as an employee in privately-owned pharmacies.

Mr. Myron Finkelstein is a certified public accountant and has been engaged in the practice of accounting in the State of New York since 1961.

Mr. Stanley Goldstein received his Ph.G. degree from the Brooklyn College of Pharmacy in 1966. He is, and has been, a licensed pharmacist in the State of New York since 1967 and since such time, has been engaged in the practice of pharmacy as an employee in privately-owned pharmacies.

Dr. Edward Feldman, the brother of Mr. John Feldman, has been an osteopathic physician since 1966. He is licensed to practice in the States of New York, Michigan and New Jersey. He is presently serving his residency at Martland Hospital, Newark, New Jersey.

Remuneration

On July 22, 1971, the Company entered into an employment agreement with Mr. John Feldman. Such agreement provides for an annual salary of $15,000. The agreement will commence on the date the Company acquires an operating property and will terminate three years from the date thereof.

It is presently contemplated that no other officer or director will receive remuneration until operations are commenced, except for out-of-pocket and travel expenses, which shall be limited to $100 per day.

In the event of insufficient earnings, a portion of the proceeds of this offering may be used to pay such salaries. See APPLICATION OF PROCEEDS.

CERTAIN TRANSACTIONS

In July, 1971, the Company issued 250,000 shares of its Common Stock, $.01 par value as follows: (i) 215,000 shares to Mr. John Feldman in consideration of services rendered to the Company in the organization and formation thereof; (ii) 15,000 shares to Mr. Myron Finkelstein for $150; (iii) 7,000 shares to Mr. Irving Gorin for $5,250; (iv) 4,000 shares to Mr. Harvey Mayer for $40; (v) 3,000 shares to Mr. Stanley Goldstein for $30; (vi) 3,000 shares to Dr. Edward Feldman for $30; and (vii) 3,000 shares to Mr. Harrison Streisfield for $2,250.

For details of an employment agreement between the Company and Mr. John Feldman, see MANAGEMENT - "Remuneration".

DESCRIPTION OF SECURITIES

The authorized capital stock of the Company consists of 400,000 shares of Convertible Preferred Stock, par value $.01 per share, and 600,000 shares of Common Stock, par value $.01 per share.

Convertible Preferred Stock

As permitted by the laws of the State of New York, the Board of Directors of the Company is empowered to authorize the issuance of Convertible Preferred Stock from time to time in its discretion and to establish the rights, privileges and preferences of such shares, including, by way of specification but not by way of limitation, dividend rights, redemption rights and conversion rights. The holders of Convertible Preferred Stock will have no preemptive or other subscription rights and will have no voting rights except as required by the laws of the State of New York. At the present time, there are no shares of Convertible Preferred Stock outstanding and no present plans with respect to the issuance thereof.

Common Stock

All shares have equal voting, liquidation and dividend rights. Holders of common shares have no preemptive or other subscription or conversion rights, and there are no redemption or sinking fund provisions applicable thereto. All shares outstanding are fully paid and non-assessable, except to the extent that the ten largest shareholders may be subject to liability for debts, wages and salaries due to laborers, servants or employees under Section 630 of the New York Business Corporation Law.

Warrants

Each Warrant included in the Units is immediately separable and transferable and will entitle the registered holder to purchase one share of Common Stock from the date hereof until December 20, 1973, unless called for redemption, at a price of $2.25 per share. The number of shares of Common Stock deliverable upon exercise of the Warrants, and the exercise price, are subject to adjustment to protect against dilution in the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, issuance of Convertible Preferred Stock or other change in the corporate structure or shares of the Company. The holders of the Warrants have no voting, dividend or other rights as shareholders of the Company unless and until the Warrants are exercised.

The Warrants are redeemable at the option of the Company, in whole or in part, at any time prior to 1973, at $.25 per Warrant.

The Warrant Agreement provides that in the event the Company elects to redeem a Warrant, it must give notice to the holder of the Warrant, by first class mail, not more than sixty nor less than thirty days prior to the date fixed for redemption at the address of the holder shown upon the records of the Warrant Agent. The rights under such Warrants will terminate unless exercised on or before the fifth day prior to the date fixed for redemption.

Transfer and Warrant Agent

Registrar and Transfer Company, New York, N. Y., will act as transfer agent of the Common Stock of the Company and as Warrant Agent.

UNDERWRITING

The Company has entered into an underwriting agreement with Commonwealth Chemical Securities, Inc. (the "Underwriter") pursuant to which the Underwriter has agreed to use its best efforts for a period of thirty (30) days following the effective date of this offering (which period may be extended for an additional 60 days upon mutual consent by the Company and the Underwriter) to sell 50,000 Units on a "best efforts - all or none" basis, and an additional 50,000 Units on a "best efforts" basis. At least 50,000 Units offered hereby must be sold and paid for or all subscription payments shall be promptly refunded in full without interest. All funds received from the subscribers will be placed in a special bank account, to be maintained for the benefit of subscribers, until such time as subscriptions for at least 50,000 shares have been received. The Underwriter will receive a commission of $.225 for each Unit sold and a non-accountable expense allowance of $8,500.00 for all of its expenses, including attorney's fees, if 50,000 Units are sold and $.05 per Unit for each additional Unit sold in excess of 50,000.

All or part of the Units may be offered by the Underwriter to members of a selling group consisting of dealers who are members of the National Association of Securities Dealers, Inc. The Underwriter has advised the Company that it may allow a selling concession to selected dealers from which concession such selected dealers may reallow a concession to certain other brokers and dealers.

The obligation of the Underwriter to offer the securities offered hereby is subject to the accuracy of the representations and warranties of the Company contained in the Underwriting Agreement, the performance by the Company of its agreements contained therein, the approval of certain legal matters by counsel for the Underwriter, and to the condition, among others, that the Notification has become effective herein.

The Underwriting Agreement provides for reciprocal indemnification between the Underwriter and the Company including, among other things, indemnification with respect to any incorrect statement of a material fact in this Offering Circular or the omission to state herein a material fact required to be stated or necessary to make the statements herein not misleading.

Mr. Robert Drucker, an officer, director and stockholder of the Underwriter, is a brother-in-law of Mr. John Feldman, President of the Company.

LEGAL OPINIONS

Legal matters relating to this offering will be passed upon for the Company by Harvey Mayer, Esq., 299 Broadway, New York, N. Y. 10006, and for the Underwriter by Emanuel Brown, Esq., 150 Broadway, New York, N. Y. 10038. Mr. Brown was formerly Vice-President, Secretary and a stockholder of the Underwriter. Mr. Mayer is a stockholder of the Company.

Messrs. Balterman & Geist, Ten East Fortieth Street, New York, New York 10016, have acted as Special Counsel to the Company in connection with matters relating to the Securities Act of 1933, as amended.

LITIGATION

The Company is not a party to any pending or, to its knowledge, any threatened litigation.

ADDITIONAL INFORMATION

The Company has filed with the New York Regional Office of the United States Securities and Exchange Commission a Notification on Form 1-A under the Rules and Regulations of the Securities and Exchange Commission with respect to this offering. This Offering Circular omits certain information contained in the Notification as permitted by the Rules and Regulations of the Securities and Exchange Commission. For further information with respect to the Company, reference is made to such Notification and related exhibits.

FINANCIAL STATEMENTS

The following financial statements have been prepared from the books and records of the Company and are unaudited.

BENEFICIAL LABS, INC.

October 31, 1971

Statement of Assets
(Unaudited)

Cash in banks	$ 4,750	
Organization expenses	500	
Legal fees relating to proposed sale of securities	2,500	
		$ 7,750

Statement of Liabilities
(Unaudited)

Commitments and Contingent Liabilities (Note 1)

Statement of Capital Shares
(Unaudited)

Preferred Stock, $.01 par value
Authorized 400,000 shares
Issued and outstanding: None

Common Stock, $.01 par value	
Authorized 600,000 shares	
Issued and outstanding: 35,000 shares for cash	$ 350
215,000 shares for services	---
Total Issued & Outstanding: 250,000 shares	$ 350
Capital surplus, excess of par	7,400
Total	$ 7,750

Statement of Receipts and Expenditures
(Unaudited)

From June 16, 1971 (date of incorporation) to October 31, 1971

Receipts:		
Issuance of capital stock for cash		$ 7,750
Expenditures:		
Organization Expense	$ 500	
Legal fees relating to proposed sale of securities	2,500	3,000
Cash balance, October 31, 1971		$ 4,750

BENEFICIAL LABS, INC.

Notes to Financial Statement
As of October 31, 1971
(Unaudited)

NOTE 1 - Commitments and Contingent Liabilities

For description of employment agreement proposed to be entered into with an officer, see MANAGEMENT - "Remuneration".

No dealer, salesman or other person is authorized by the Company or the Underwriter to give any information or to make any representations not contained herein, and information or representations not herein contained, if given or made, must not be relied upon as having been authorized by the Company or the Underwriter. The offering of these securities is made only by this Offering Circular. This Offering Circular does not constitute an offer to buy any of these securities in any state in which such offer or solicitation may not lawfully be made.

These securities are offered subject to prior sale when, as and if delivered to, and accepted by, the Underwriter and subject to the approval of certain legal matters by counsel for the Company and counsel for the Underwriter. The Underwriter reserves the right to withdraw, cancel or modify such offer and to reject orders in whole or in part.

100,000 Units

BENEFICIAL LABS, INC.

100,000 Shares of

Common Stock

(Par Value, $.01 Per Share)

with Redeemable Warrants
to purchase an additional
100,000 shares of
Common Stock

OFFERING CIRCULAR

Dated December 20, 1971

COMMONWEALTH CHEMICAL SECURITIES, INC.

USA 33s - 475
(ED. 4-25-71)

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

10

PLAINTIFF'S PREKIMINARY INJUNCTION EXHIBIT 4 - BANK STATEMENT

FPI-MI—8-2-73-10M-6753

Commonwealth
SUBSCRIPTION

PREVIOUS BALANCE	DEPOSITS AND CREDITS	CHECKS AND DEBITS
48,150.00	45,387.75	94,033.75

CHECKS AND DEBITS	DEPOSITS AND CREDITS	DATE	BALANCE
	[illegible]	3/1	90,337.50
	33,187.50 ✓		
	1,446.25 ✓	3/1	
	2,25[illegible]		94,033.75
		3/1	91,000.00
3,033.75		3/22	.00
91,000.00			
2 ITEMS ENCLOSED			

Not [illegible]

Marked by CK

PLEASE EXAMINE AT ONCE

-77a-

PLAINTIFF'S PRELIMINARY INJUNCATION EXHIBIT 6 - LETTER TO SEC FROM JULIUS KLEINMAN

COMMONWEALTH CHEMICAL SECURITIES, INC.
INVESTMENT BANKERS
116 JOHN STREET
NEW YORK, N Y 10038

TELEPHONE
(212) 349-5460
TWX: 710-581-5581

SEC. EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED
MAR 9 - 1972

March 8, 1972

☐ Duffy ☐
☐ Moran ☐

Securities & Exchange Commission
26 Federal Plaza
New York, New York 10007

Re: Beneficial Labs, Inc.
24NY 7399

Attn: NY:SI:AB
Regulation A Unit
Alexander Bienenstock, Esq.

Dear Mr. Bienenstock:

Pursuant to our undertaking and after making deletions for cancellations etc, enclosed please find a new list showing the names and addresses of all the subscribers to the above new issue totaling 50,650 units.

We expect to close within the next several days.

Please advise if there are any questions or comments to the enclosed schedule.

Thank you for your courtesy to us in this matter.

Very truly yours,

Julius Kleinman

JK/sd

BENEFICIAL LABS

NAME	ADDRESS	UNITS
Abraham Berger	225 W. 34th St. N.Y.C.	800
Alan Madison	431 Broome St. N.Y.C.	500
Leon Madison	431 Broome St. N.Y.C.	500
David Shichman	93 Arleigh Road, Gt.Neck,N.Y.	2000
Peter McDermott	42 Broadway, N.Y.C.	1000
Sal Abruzzo	1017 67th St. Bklyn,N.Y.	700
Marie Albano	100 Stuart Av. No.Valley Stream, N.Y.	700
Dorene Hausknecht	44 Chauncey Lane, Hastings, N.Y.	400
Laura Margolies	910 5th Ave. N.Y.	1000
Barbara McCabe	176 Clemens Road,Mineola,N.Y.	700
Thomas D'Alessandro	1 Chase Manhattan Pl.N.Y.C.	500
Harry & Esther Drucker	44-69 Kissena Blvd,Flush.N.Y.	600
David Shichman Csdn Karen	93 Arleigh Road,Gt.Neck,N.Y..	1000
Murray Torn	180 Montague St. Bklyn,N.Y.	1000
Sam Turtletaub	65 Poplar Drive, Roslyn,N.Y.	1000
Margolies Bros Mgt	65 Poplar Drive, Roslyn,N.Y.	2000
Abe Margolies	910 5th Ave. N.Y.C.	1500
Sylvia Pavel Csdn Yitzchuk	973 44th St., Bklyn, N.Y.	1000
Ruben & Dvorah Wallman	67 Riverside Dr. N.Y.C.	1000
Howard Finkelstein	97 Princeton Drive,TappanN.Y.	500
Mary Finkelstein	2181 Wallace Ave. Bx. N.Y.	1000
Milton Bard	225 W. 23rd St. N.Y.C.	2000
Stanley Bard	220 W. 23rd St. N.Y.C. c/o Chelsea Hotel	2000
Marvin Nott	245 E. 25th St. N.Y.C	1100
Louis Perlmutter	636 Michele Pl.No.Woodmere N.Y.	2200
Herb Nasson	150 Broadway, N.Y.C.	550
Isidore Cohen	150 Broadway, N.Y.C.	550
Mary Boilen	305 E. 31st St. N.Y.C.	2000
Sherry Ash & Co.	93-35 57 Ave.Lefrak City,N.Y.	2000
Alice Greenblatt	176 E. 85th St. N.Y.C.	2000
Sheila Goldberg	538 E. 84th St. N.Y.C.	2000
Bella Arner	70 W.Maple Ave. Monsey,N.Y.	1000
Joseph Arner	70 W.Maple Ave. Monsey,N.Y.	1000
Esther Schlossberg	19 Route 306 Monsey, N.Y.	1000
Isadore Schlossberg	19 Route 306 Monsey, N.Y.	1000
Lloyd Forster	15 Park Row, N.Y.C.	350
Jack Ginzburg & Robert Margolies	103-26 68th Road, Forest Hills, N.Y.	900
Linda Rosenblatt	156 E. 21st St. Bklyn, N.Y.	350
Mirriam Rosenblatt	1775 E. 18th St. Bklyn, N.Y.	250
XXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXX
Jerry Prezioso	1745 E. 18th St. Bklyn, N.Y.	2000
Marvin Amster	2411 E. 3rd St. Bklyn, N.Y.	2000
Nellie Pyles	222 E. 35 St. N.Y.C.	1000
Hunter Brashier	95-40 147 Place, Jamaica,N.Y.	2000
Ultramar Setting	450 W. 33rd St. N.Y.C.	2000
		750

PLAINTIFF'S PRELIMINARY INJUNCTION EXHIBIT 7 - BENEFICIAL LABS TRADING SCHEDULE (UNITS), MARCH 10, 1972 - JANUARY 10, 1973

(pp. 81a - 86a)

J. Jacobowitz

Beneficial Loan, Inc.

Trading Schedule (Common)

March 10, 1972 - $

Broker	Purchaser	# of Shares	Time	Price Per Share	Seller	Broker
		Friday - March 10, 1972				
Commonwealth Chemical ↓ A.C. Kluger Laidlaw + Co Laidlaw + Co.	Trading Account ↓ Irving Rosenberg ↓	700	3 24	2 1/2	Salvatore Abbruzzo	Commonwealth Chemical ↓ A.C. Kluger
		700	3 24	2 1/2	Barbara McCabe	
		700	3 25	2 1/2	Helen Abbruzzo	
		100	3 25	2 1/2 (odd lot)	Trading Account ↓	
		700	—	3 1/4		
		100	—	2 1/2		
		Monday - March 13 1972				
Laidlaw & Co Laidlaw + Co Amherst Commonwealth Chemical ↓	Irving Rosenberg ↓ Trading Account ↓	200	1 st	4	Gerry Pezzeck	Commonwealth Chemical Amherst Commonwealth Chemical ↓
		200	2 nd	4 1/2	Trading Account	
		200	2 24	4 1/2	Joseph Dreyer	
		1000	—	2 1/2	Howard Finkelstein	
		5100	—	2 1/2	Mary Finkelstein	
		Friday - March 17 1972				
A.J. Carlo Commonwealth Chemical Hallo + Steiglitz Commonwealth Chemical	Trading Account ↓ Trading Account	300	2 23	5 1/2	Trading Account	Commonwealth Chemical ↓ A.J. Carlo Commonwealth Chemical
		3000	2 25	4 7/8	Robert Dreyer	
		300	3 23	5 1/4	Trading Account	
		3000	3 25	4	Davis Shuchman	
		Monday - March 20, 1972				
F.H. Mayer ↓	Regina Silberberg ↓	1000	12 42	5 1/4	Ethel Schlossberg	Commonwealth Chemical ↓
		1000	12 52	5 1/4	Jerome Schlossberg	
		Tuesday - March 21 1972				
Amherst Securities ↓ A.J. Carlo ↓	Trading Account ↓	100	1 10	5 3/4	Trading Account ↓	A.J. Carlo ↓ Commonwealth Chemical Commonwealth Chemical
		700	1 16	6		
		200	1 27	5 7/8	R. Dreyer c/o Chasgil	
		100	1 47	5 7/8	Trading Account	
		Thursday - March 23, 1972				
Hallo + Steiglitz A.J. Carlo Hallo + Steiglitz A.J. Carlo Commonwealth Chemical	Trading Account ↓ Trading Account	200	10 35	6 1/4	Trading Account	A.J. Carlo Commonwealth Chemical A.J. Carlo Commonwealth Chemical Amherst Sec.
		200	12 50	6 1/8	Dorothy Ruckert	
		200	12 52	6 1/8	Trading Account	
		200	2 16	6 1/8	Dorothy Ruckert	
		300	3 22	6 1/8	Trading Account	

J. Jurkowitz

Beneficial Loan, Inc.

Trading Schedule (Common Stock)

Pg 1 of 6

Broker	Purchaser	Shares	Time	Price Per Share	Seller	Broker
		Friday - March 24 1972				
Commonwealth Chemical	Trading Account	300	11 [illegible]	6 1/4		Hallo + Steiglitz
		Wednesday - April 5, 1972				
Commonwealth Chemical ↓ E.E. Henderson ↓ Bache + Co ↓	Trading Account ↓ Optional Commodities Acct. ↓	400	3[illegible]	7	Regina Sinopsky R. Deutsch c/a Cheryl Trading Account ↓	F.W. Mayer Commonwealth Chemical ↓ E.E. Henderson ↓
		700	[illegible]	7		
		100	[illegible]	7 1/4 (Last 1/4)		
		900	1[illegible]	7 1/4 (Last 1/4)		
		900	[illegible]	7 1/4		
		900	[illegible]	7 3/4		
		Friday - April 21, 1972				
Hay, Fales + Co. Inc	Trading Account	200	[illegible]	7 1/2		Hallo + Steiglitz
		Monday - April 24 1972				
Commonwealth Chemical	Trading Account	200	[illegible]	7 7/8	Trading Account	Hay, Fales + Co. Inc
		Monday - May 15 1972				
Amherst Secur. Inc ↓ Commonwealth Chemical	Trading Account ↓	100	10[illegible]	7 1/2	Irving Rosenberg ↓ Trading Account	Harris Upham ↓ Amherst Securities
		100	10[illegible]	7 1/2		
		200	3[illegible]	7 5/8		
		Tuesday - May 16 1972				
Amherst Securities	Trading Account	200	10[illegible]	7 1/2	Irving Rosenberg	Harris Upham
		Monday - May 22 1972				
Edward E. Henderson Commonwealth Chemical	Trading Account Regina Sinopsky	300	1[illegible]	7 1/2	Irving Rosenberg Trading Account	Wallis Upham Edward E. Henderson
		300	1[illegible]	7 3/8		
		Tuesday - May 23 1972				
Amherst Securities	Trading Account	200.0	[illegible]	7	Mosgilo, Bass Right Co.	Oxford Securities

Beneficial Loans, Inc.

Trading Schedule (Common)

Broker	Purchaser	# of Shares	Time	Price per Share	Seller	Broker
		Thursday - June 8, 1972				
Commonwealth Chemical	Trading Account	11200	1135	7 1/4	Trading Account	Amherst Securities
		Monday - June 19, 1972				
Commonwealth Chemical	Trading Account	1000	1102	7 1/8	Trading Account	Amherst Securities
		Wednesday - June 21, 1972				
Amherst Securities	Trading Account	11500	10	8 1/2	Robert Deveren	Commonwealth Chemical
Commonwealth Chemical	Julius Weinman	4000	10	5	various Customers	Executed Securities
	Robert Deveren	5350	1102	5	various Customers	↓
		Thursday - July 13, 1972				
Amherst Securities	Trading Account	11100	1155	8 1/2	Julius Weinman	Commonwealth Chemical
		Friday - July 14, 1972				
Amherst Securities	Trading Account	1100	12	8 3/4	Robert Deveren	Commonwealth Chemical
		Monday - July 17, 1972				
Amherst Securities	Trading Account	500	3	8 3/4	Robert Deveren	Commonwealth Chemical
		Monday - August 7, 1972				
Amherst Securities	Vanguard Fund	1000	2	11 1/8	Lori Rukeyser	Amherst Securities
		Thursday - August 24, 1972				
Commonwealth Chemical	Trading Account	200	10	9 7/8		Hale & Steigerwald

Benfield Labs. Inc

Trading Schedule (Common)

Broker	Purchaser	# of Shares	Time	Price Per Share	Seller	Broker
		Tuesday - Sept 19 1972				
Commonwealth Chemical Amherst Securities Eng. Co. (also A/C Kluegel)	Trading Account Milford Holt Trading Account (Ray Hugo) Bradley Bean Int. Fund	400	10	9 1/4	Milford Holt Trading Account	Weis, Voisin & Co Amherst Securities Commonwealth Chemical Eng. Co. (also A/C Kluegel)
		400	11	8 1/4		
		6200	1.30	9		
		8000		9 1/2		
		Friday - Sept. 22, 1972				
Amherst Securities	Vanguard Fund (Ray Hugo) Bradley Bean Spec. Fund	3500	10 1/2	7 7/8	Trading Account	Amherst Securities
		36000	10 1/8	7 7/8		
		Monday - Sept. 25, 1972				
A.J. Cardo	Trading Account	100	2 1/8	12 1/2	Trading Account	W.H. Thompson, Magid Hecker, Beaumont, Sprayregen Sprayregen Securities
		1100	2 1/4	12 1/2		
		100	2 3/8	13		
		200	2 1/4	13		
		5100	3 1/8	12 7/8		
		100	3 1/4	12 3/4		
		1200	3 1/4	12 1/4		
		Tuesday - Sept 26 1972				
Commonwealth Chemical	Trading Account Clara Brown	500	2 3/8	13	Trading Account	A.J. Cardo Commonwealth Chemical
		500	2 1/4	13 1/8		
		Wednesday - Sept. 27 1972				
Commonwealth Chemical	Trading Account	300	6 1/2	15	Julius Klein	Commonwealth Chemical
		Tuesday - Oct 24 1972				
Commonwealth Chemical	R Drexel c/f Susan c/f Cheryl c/c Julie	800	2 1/8	15	Trading Account	Commonwealth Chemical
		500	2 1/4	15		
		900	2 1/2	15		
		Thursday - Oct 26 1972				
Commonwealth Chemical	Trading Account	500	3 1/2	15	Clara Brown	Commonwealth Chemical

Beneficial Loss, Inc.

Trading Schedule (Continued)

Broker	Purchaser	# of Shares	Time	Price Per Share	Seller	Broker
		Thursday - Nov 9, 1972				
Commonwealth Chemical ↓	Leon Madison	500	2nd	17 1/2	Lori Ruskin	Commonwealth Chemical ↓
	Lori Ruskin	600	3rd	17 1/2	R. Drucker c/f June	
		Monday - Dec 11, 1972				
Bruns, Nordeman	Stephen Feinman	100	1st	21	Trading Account	Flaks, Zaslow
Flaks, Zaslow	Trading Account	100	2nd	20 1/2	Robert Drucker	Commonwealth Chemical
		Wednesday - Jan 10, 1973				
Flaks, Zaslow	Trading Account	100	2nd	17	Trading Account	Helfer, Broughton & Bucholtz
Helfer, Broughton & Bucholtz	↓	100	3rd	11 1/4	Trading Account	Commonwealth Chemical
Commonwealth Chemical	Dorothy Drucker	500	3rd	20	Trading Account	Commonwealth Chemical
		Thursday - Jan 11 1973				
Commonwealth Chemical	Trading Account	100	1st	10 1/4	Trading Account	Flaks, Zaslow
Flaks, Zaslow ↓	↓					
		Monday - Jan 15 1973				
		(Canc) 500	1st	24 1/4	Trading Account	Commonwealth Chemical
		(Canc) 500	1st	24 1/4	Julius Kleinman	↓
		Wednesday - Jan. 17, 1973				
Edwards & Hanly	Jesse Magdiano	100	1st	15	Trading Account	Flaks, Zaslow
Flaks, Zaslow	Trading Account	100	1st	12 1/4	Julius Kleinman	Commonwealth Chemical
		Thursday - Jan. 18 1973				
Flaks, Zaslow	Trading Account	300	3rd	23 1/2	New York Hedge Fund	Flaks, Zaslow
Commonwealth Chemical	Lori Ruskin	300	3rd	24	Trading Account	Flaks, Zaslow
		Monday - Jan 22 1973				
Commonwealth Chemical	Julius Kleinman	(Canc) 200	1st	11 1/4	Stella Feinman	Bruns, Nordeman

UNOFFICIAL LABS, INC.

TRADING SCHEDULE (Continued)

Broker	Purchaser	*00 Shares	Time	Price Per Share	Seller	Broker
		WEDNESDAY - JAN. 24, 1973				
C.N. Will (A/C TILCO SEC.) FLAKS, ZASLOW		100	12 1/2	13	TRADING ACCOUNT ROBERT DRUCKER	FLAKS, ZASLOW COMMONWEALTH CHEMICAL
		100	12 22	12 1/2		
		TUESDAY - JAN. 30, 1973				
COMMONWEALTH CHEMICAL COMMONWEALTH CHEMICAL	INVESTMENT/INDICATOR FUND JOSEPH ABNER	10000	1 [illegible]	10	ROBERT DRUCKER TRADING ACCOUNT	COMMONWEALTH CHEMICAL FLAKS, ZASLOW
		2800	2 [illegible]	10 3/4		
		FRIDAY - FEB. 9, 1973				
COMMONWEALTH CHEMICAL COMMONWEALTH CHEMICAL	ROBERT DRUCKER TRADING ACCOUNT (?) (2 Rules)	100	3 [illegible]	11	TRADING ACCOUNT RITTENHOUSE FUND	COMMONWEALTH CHEMICAL DELPHI CAPITAL CORP.
		3000	—	11		
		THURSDAY - FEB. 15, 1973				
CABOT - SHAW	TRADING ACCOUNT	950	2 [illegible]	11X	TRADING ACCOUNT MARY SUMERAL	COMMONWEALTH CHEMICAL
		150	2 [illegible]	11X	S. PAVEL C/F YITZCHAK	
		100	2 [illegible]	11X	A. DEUTSCHMAN C/F JAY	
		800	2 [illegible]	11	TRADING ACCOUNT	
		150		11X *		
		TUESDAY - FEB. 27, 1973				
CABOT - SHAW COMMONWEALTH	TRADING ACCT TRADING ACCT	3000			N.Y. HEDGE FUND TRADING ACCOUNT	CABOT - SHAW
		3000				

PLAINTIFF'S PRELIMINARY INJUNCTION
EXHIBIT 8 (PARTIAL) - ORDER TICKET
AND CONFIRMATION

DATE _____

BATCH _____

MARKET (16)
1. N.Y.
2 AMERICAN
3. O-T-C
4. NCC
5. NATIONAL 100.000 Items, Net

AGENCY TRADES

SOLD-SOLD-SOLD

CONF. CODE (8)
1. (-) OR (-)
2 PRINCIPAL
4. CROSS
5. AGENCY
6. PROSPECTS 7301305233

TAX CODE
1. NO TAX
2. NON-RES. TAX 90

SEQUENCE NO. (1)	TC (2)	QUANTITY (3)	SECURITY DESCRIPTION	SYMBOL (4)	PRICE (5)	FRACTION (6)
	52	10000	Beir. common	BET	10	—

SOLD TO	BRKR/CUSTOMER NO. (7)	(8) CONF	(9) CLR	COMMISSION (10)	(11) TAX	(12) TRADER	INTEREST (13)	S.E.C. (14)
11 FUNP Cpt Schwab					1	1		

SURCHARGE/ MISC. (15)	(16) MKT.	OFF/SLSM. (17)	(18) CONT	SOLD FOR	CUSTOMER NO. (19)	(20) CONF	(21) CLR	COMMISSION (22)
				RDeck 3x50 —				
				JKe 3250				

INTEREST (23)	S E.C. (24)	SURCHARGE/ MISC. (25)	(26) MKT.	OFF/SLSM. (27)	SPECIAL INSTRUCTIONS

REV. 11'71 COMMONWEALTH CHEMICAL SECURITIES, INC. 110 JOHN STREET NEW YORK 10038

★★ COMPARISON

1 We confirm SALE today by us through you as our broker, of

2 As principals and for our account, we confirm SALE to you today, of

3 * On your instructions and as broker for you, we have this day BOUGHT for your account and risk.

4 * On your instructions and as broker for you, we have this day BOUGHT for your account and risk. In this transaction, we have also acted as broker for another from whom we are to receive $_____ commission.

5 As broker for another, we confirm SALE to you today, of

6 As per prospectus/offering circular enclosed or mailed under separate cover.

COMMONWEALTH CHEMICAL SECURITIES, INC.
116 JOHN STREET - NEW YORK, N.Y. 10038
TRADING - (212) - 349-7528
(212) - 349-5460

ACCOUNT NO.
759

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☆

10,000	Beneficial Labs. Common - New	10	100,000.00		

Investors Indicators Fund
120 Montgomery St. Room 2500
DT - Crocker Nat'l Bk. San Raefel
San Francisco, Calif. 94104

DELIVERY BY: COMMONWEALTH CHEMICAL SECURITIES, INC.

IF NOT CORRECT, PLEASE NOTIF

PROMPT SETTLEMENT IS REQUESTED TO COMPL
FEDERAL RESERVE SYSTEM.

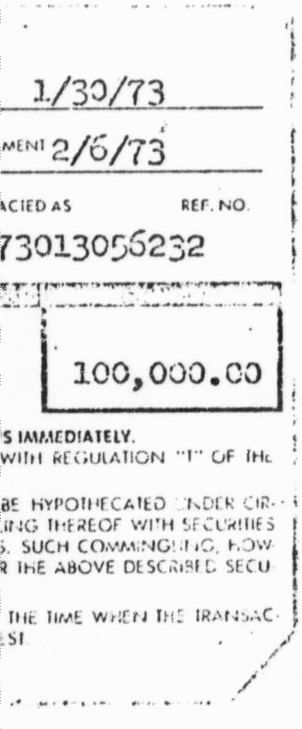
THE SECURITIES ABOVE DESCRIBED ARE OR MA
CUMSTANCES WHICH WILL PERMIT THE COMMIN
CARRIED FOR THE ACCOUNT OF OTHER CUSTOM
EVER, IF ANY, CEASES UPON PAYMENT BY YOU
RITIES IN THE AMOUNT INDICATED ABOVE.

* THE NAME OF THE SELLER OF THIS SECURITY A
TION TOOK PLACE WILL BE FURNISHED UPON REC

ENGLISH DATA CORPORATION FORM S-1

PLAINTIFF'S PRELIMINARY INJUNCTION EXHIBIT 9 - BENEFICIAL LABS TRADING SCHEDULE (WARRANTS), MARCH 10, 1972 - FEBRUARY 15, 1973

(pp. 90a - 92a)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ACIED AS REF. NO.

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BENEFICIAL LABS, INC.

TRADING SCHEDULE (FORM 10) - WARRANTS

MARCH 10, 1972 - FEB. 15, 1973

BROKER	PURCHASER	# OF SHARES	TIME	PRICE PER SHARE	SELLER	BROKER
		FRIDAY - MARCH 10, 1972				
COMMONWEALTH CHEMICAL ↓	DOROTHY DRUCKER ↓	700	3:24	1/4	SALVATORE AGRESTO	COMMONWEALTH CHEMICAL ↓
		700	3:24	1/4	BERNARD MC CRAE	
		700	3:24	1/4	MARIE KIGHLO (STOCK NOT REC. AS TRANS.)	
		MONDAY - MARCH 13, 1972				
COMMONWEALTH CHEMICAL	R. DRUCKER C/F JULIE	500	10:28	1/4	LEON MADISON	COMMONWEALTH CHEMICAL
	R. DRUCKER U/G JULIE	500	10:28	1/4	ALLAN MADISON	
	DOROTHY RUKASIN	500	10:32	1/4	MARY FINKELSTEIN	
	R. DRUCKER C/F CHERYL	1000	10:32	1/4	HOWARD FINKELSTEIN	
	JOSEPH ABNER	2000	10:32	1/4	HUNTER BRANNIGAN	
	DOROTHY DRUCKER	1000	11:-	1/4	R+D WALLMAN	
	DOROTHY RUKSIN	250	11:-	1/4	MIRIAM RADNIAK	
	DOROTHY RUKSIN	350	11:-	1/4	LINDA RODNIAK	
	R. DRUCKER C/F SUSAN	1000	11:-	1/4	LINDA MARGOLIES	
	DOROTHY DRUCKER	1500	11:-	1/4	AL MARGOLIES	
	R. DEUTCHMAN C/F JAY	2000	11:-	1/4	MARGOLIES GREAT NECK	
	DOROTHY RUKASIN	400	11:-	1/4	DONNIE HALICKICENT	
	DOROTHY DRUCKER	900	11:-	1/4	J. GOLDBERG + R. MARGOLIES	
	GERRY PRES 1000	350	11:-	1/4	LLOYD FOSTER	
	DOROTHY RUKASIN	600	11:-	1/4	H & E DRUCKER	
	LORI RUKASIN	2000	11:-	1/4	ULTRAMAR SERVICE CORP	
	GERRY PRES 1000	1000	11:-	1/4	SAM TEICHTAUB	
	DOROTHY RUKASIN	200	11:-	1/4	ABRAHAM BERGER	
	DOROTHY RUKASIN	100	→	1/4	(STOCK) TRADING ACCOUNT	
		7150				
		FRIDAY - MARCH 17, 1972				
COMMONWEALTH CHEMICAL	BELLA ACHER	5000	12:15	1/2	DAVID SILVERMAN	COMMONWEALTH CHEMICALS
		THURSDAY - MARCH 23, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	700	1:38	4 3/4	ARTHUR RUSSO	COMMONWEALTH CHEMICALS

J. Jurkowitz

BENEFICIAL LABS. INC.
TRADING SCHEDULE (WARRANTS)

BROKER	PURCHASER	NO. OF SHARES	TIME	PRICE PER SHARE	SELLER	BROKER
		WEDNESDAY - APRIL 5, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	300	11:12	4 1/4	BELLA ARKER	COMMONWEALTH CHEMICAL
		500	11:13	5	ANGELINA LA MARCA	
		500	11:13	4	DOROTHY DRUCKER	
		TUESDAY - MAY 2, 1972				
COMMONWEALTH CHEMICAL	PETER RUSSO	7,000	N/A	4 7/16	DOROTHY DRUCKER	COMMONWEALTH CHEMICAL
		WEDNESDAY - MAY 3, 1972				
COMMONWEALTH CHEMICAL	HUNTER BANNIER	1,250	1:25	4 7/16	DOROTHY DRUCKER	COMMONWEALTH CHEMICAL
		MONDAY - MAY 15, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	11,000	2:00	4 1/4	JOSEPH HEIER	COMMONWEALTH CHEMICAL
		MONDAY - AUGUST 28, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	4,500	1:?	8	(SHORT) ROBERT DRUCKER	COMMONWEALTH CHEMICAL
		TUESDAY - SEPT. 5, 1972				
COMMONWEALTH CHEMICAL	ROBERT DRUCKER	4,250	1:??	8	TRADING ACCOUNT	COMMONWEALTH CHEMICAL
		WEDNESDAY - SEPT. 6, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	250	3:??	8	ANGELINA LA MARCA	CCS
		FRIDAY - SEPT. 22, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	3,300	10:??	4 9/16	TRADING ACCOUNT	AMHERST SECURITIES
		TUESDAY - OCT. ?, 1972				
FRANK, ZASLOW KOSS SECURITIES	TRADING ACCOUNT HERBERT NEIDTAT	100	11:??	12 3/4	ROBERT DRUCKER TRADING ACCOUNT	COMMONWEALTH CHEMICAL FRANK, ZASLOW
		100	2:??	13		

Beneficial Loan, Inc.
Trading Schedule
(Warrants)

Broker	Purchaser	# of Shares	Time	Price Per Share	Seller	Broker
		Thursday - Oct. 5 1972				
C.E. Richard Ellis H.H. Thompson, Magid Flaks, Zaslow Alex Schlow	Trading Account ↓ (N.Y. Agency) Berkley Dean Spec. Fund	3000	2 37	14	Trading Account ↓	Commonwealth Chemical C.E. Richard Ellis H.H. Thompson, Magid Flaks, Zaslow
		3000	2 35	14		
		3000	2 37	14 1/4		
		3000	3 21	14 3/8		
		Tuesday - Oct. 24 1972				
Commonwealth Chemical ↓ Delphi	Trading Account ↓ K Rittenhouse Fund	1000	2 52	16	R Drucker c/o Cheryl R Drucker c/o Vale R. Drucker c/o Susan Trading Account	Commonwealth Chemical ↓
		1000	3 52	16		
		1000	3 52	16		
		3000	3 10	16		
		Friday - Jan. 12 1973				
Commonwealth Chemical Flaks, Zaslow	David Shuckman Trading Account	2000	—	20	Dorothy [illegible] David Shuckman	Commonwealth Chemical Commonwealth Chemical
		Monday - Jan. 15 1973				
		2000	11 [illegible]	20 1/4		
		Tuesday - Jan. 23 1973				
Ross Securities Commonwealth Chemical Cabot, Shaw	Herbert Dantat Trading Account ↓	(New) 100	1 [illegible]	10 1/4	Robert Drucker Trading Account ↓	Commonwealth Chemical Flaks, Zaslow Commonwealth Chemical
		Thursday - Feb. 15 1973				
		2000	12 [illegible]	18		
		2000	2 [illegible]	23		

PLAINTIFF'S PRELIMINARY INJUNCTION EXHIBIT 10 - BENEFICIAL LABS TRADING SCHEDULE (UNITS), MARCH 10, 1972 - JANUARY 10, 1973

(pp. 94a - 97a)

10

BENEFICIAL LAND INC.

TRADING SCHEDULE (FORM 10) UNITS (UNITS = 1 CON = 1 wt.)

MARCH 10, 1972 – JAN 10, 1973

BROKER	PURCHASER	NUMBER OF SHARES (UNITS)	TIME	PRICE PER SHARE	SELLER	BROKER
		FRIDAY – MARCH 10 1972				
COMMONWEALTH CHEMICAL SECURITIES	JACK KAYE (3RD)	1000	2 55	2 3/5	MURRAY TARN	COMMONWEALTH CHEMICAL SECURITIES
	JACK KAYE	1000	2 50	2 1/2	SALVATORE ALSANO	PETER A HEDERMOTT
	LOLI RUKASIN	550	3 10	2 3/5	HERB NASSEN	COMMONWEALTH CHEMICAL SECURITIES
	LOLI RUKASIN	550	3 15	2 3/5	ISADORE COHEN	
	TRADING ACCOUNT	2000	3 23	2 3/5	STANLEY BARD	
	MARY SHARPE	500	4 00	2 7/8	TRADING ACCOUNT	
	TRADING ACCOUNT	500	4 15	2 3/4	NELLIE PYLES	
		MONDAY – MARCH 13, 1972				
COMMONWEALTH CHEMICAL SE.	(SEE ABOVE 3)	11000	10 00	2 9/10	HARVEY NOTT	COMMONWEALTH CHEMICAL
		2000	10 00	2 3/5	MILTON BARD	
		700	10 12	2 3/5	LOUIS PECKNUTTER	
	ADELE DEUTSCHMAN C/F JAY	2400	10 12	2 3/5	(SEE ABOVE 3)	
	ADELE DEUTSCHMAN C/F JAY	900	10 2	2 1/4		
	L BRUCKER C/F CHERYL	500	12 24	2 3/5		
	TRADING ACCOUNT	500	1 55	3 1/4	TOM D'AMBSWORD	
		THURSDAY – MARCH 30, 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	500	3 00	10	HUNTER BERNICK	COMMONWEALTH CHEMICAL
		WEDNESDAY – APRIL 5 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	800	11 00	10 1/4	JOSHUA ARMER	COMMONWEALTH CHEMICAL
		700	11 00	10 1/4	BELLA ARMER	
		300	11 12	10 3/4	LOLI RUKASIN	
		MONDAY – MAY 8 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	200	2 00	11	ANGELINA DE MILLO	COMMONWEALTH CHEMICAL
		TUESDAY – JUNE 6 1972				
COMMONWEALTH CHEMICAL	TRADING ACCOUNT	200	2 00	12 1/2	ANGELINA LA MARCA	COMMONWEALTH CHEMICAL
		THURSDAY – JUNE 13 1972				
COMMONWEALTH CHEMICAL	JULIUS KLEINMAN	1500		13	TRADING ACCOUNT	COMMONWEALTH CHEMICAL
AMHERST SECURITIES	TRADING ACCOUNT	1200	2 00 (M)	13		
		WEDNESDAY – JUNE 14 1972				
AMHERST SECURITIES		500	12 00 (M)	13	TRADING ACCOUNT	COMMONWEALTH CHEMICAL
		1400	3 12	13		

Beneficial Labs, Inc.
Trading Schedule (Form 10) - Units

Broker	Purchaser	# of Shares	Time	Price per Share	Seller	Broker
		Wednesday - June 28, 1972				
Amherst Securities	Penney Transportation	100	—	13 1/8	Trading Account	Amherst Securities
"	"	700	—	13 1/8 (1)		
		Monday - July 10, 1972				
Amherst Securities	Trading Account	800	2:00	13	Penney Transportation	Amherst Securities
		Monday - August 7, 1972				
Amherst Securities	Trading Account	1400	10:00	14	United Welfare Fund	Amherst Securities
	United Welfare Fund	1500	—	14 (2)	Trading Account	
		Monday - Sept. 18, 1972				
Amherst Securities	Mildred Holt	600	—	15	Trading Account	Amherst Securities
		Tuesday - Sept. 26, 1972				
Eastern Brooklyn Distillers	Trading Account	400	10:00	(Odd) 16	Mildred Holt	Weis, Voisin
Commonwealth Chemicals	Trading Account	600	3:15	16 1/4	Trading Account	Eastern Brooklyn Distillers
		Thursday - October 5, 1972				
Flays, Zaslow	Trading Account	500	2:05	33	Trading Account	Commonwealth Chemicals
↓	Trading Account	500	2:06	33 1/2		Eastern Brooklyn
		Monday - October 16, 1972				
Delphi Capital Corp	Rittenhouse Fund	1000	2:55	30 3/4	Trading Account	Commonwealth Chemicals
		500	3:04	30 3/4	Lori Rukeyser	
		1000	3:04	30 3/4	Robert Devereux	
		500	3:05	30 3/4	S. Paul c/f Syracuse	
		Tuesday - October 31, 1972				
Commonwealth Chemicals	Trading Account	500	10:03	30 1/4	Jack Kaye	Commonwealth Chemicals
Hill, Thompson, Magid	Trading Account	100	12:00	32 3/4	Trading Account	↓
Merrill Lynch	Morris Klein (Returned)	100	12:06	33	Trading Account	Hill Thompson, Magid

J. Jurkowitz

3 of 4

Beneficial Loan, Inc.

Trading Schedule (Form 10) — Units

Broker	Purchaser	# of Shares	Time	Price Per Share	Seller	Broker
		Friday - October 27, 1972				
Leyner, Dresdin Hill, Thompson, Magid A.J. Carns Flaks, Jaslow Delphi Capital Corp	Trading Account ↓ Rittenhouse Fund	700	11:05	35 1/4	Trading Account ↓ Trading Account	Commonwealth Chemicals ↓ Leyner, Dresdin Hill, Thompson, Magid A.J. Carns Flaks, Jaslow
		200	11:16	35 1/4		
		700	11:28	35 1/8		
		400	11:44	35 1/4		
		700	—	36		
		200	—	36		
		700	—	36		
		400	—	36		
		Thursday - Nov 2 1972				
Leyner, Dresdin Leyner, Dresdin Sprayregen A.J. Carns Delphi Capital Corp	Trading Account ↓ Rittenhouse Fund	1800	1:10	35 3/4	Trading Account	Commonwealth Chemicals ↓ Leyner, Dresdin Leyner, Dresdin Sprayregen A.J. Carns
		600	1:15	35 3/4		
		700	1:28	35 3/4		
		400	1:45	35 3/4		
		1800	1:52	36		
		400	—	36		
		700	—	36		
		400	—	36		
		Friday - Nov 3 1972				
Sprayregen	Trading Account	200	11:46	34	Trading Account	Commonwealth Chemicals
		Monday - Nov 13 1972				
Commonwealth Chemicals	Trading Account	1000	11:37	35/8	Roberts Dealer 1	Commonwealth Chemicals
		Tuesday - Nov. 14 1972				
Commonwealth Chemicals	Trading Account	5m	2:30	3 1/8	Mary Shapiro 1	Commonwealth Chemicals
		Monday - Nov. 20 1972				
Merrill Lynch Herzog + Co Estabrook Hill, Thompson, Magid Estabrook Flaks, Jaslow Sprayregen	1 Marcia Kidd (Kleinman) Trading Account Trading Account Trading Account Trading Account Trading Account	500	1:19	10-35		
		600	1:28	34	Trading Account	Commonwealth Chemicals Estabrook Commonwealth Chemicals Commonwealth Chemicals Estabrook
		300	1:41	33 1/2		
		100	1:47	34		
		500	1:52	33 1/2		
		500	2:—	33		
		100	—	34		
			4:—	1972		

BENEFICIAL LANES INC.

TRADING SYMBOL (UNITS)

BROKER	PURCHASER	# OF SHARES	TIME	PRICE PER SHARE	SELLER	BROKER
		Wednesday - Nov 22 1972				
HERZFELD - STERN	TRADING ACCOUNT	100	2"	34		HERZOG & Co
		100	3"	34	TRADING ACCOUNT	Hill, Thompson Magid
	MARTIN & LOR. HOFFINGER	100	-	34		HERZFELD - STERN
		100	-	34		HERZFELD - STERN
		Friday - Nov. 24 1972				
HERZFELD - STERN	MARTIN HOFFINGER	300	-	34	TRADING ACCOUNT	SPRAYREGEN.
		Tuesday - Dec 5 1972				
FLOCS, ZASLOW	BEVERLY FLOCS	5100	2"	33	TRADING ACCOUNT	FLOCS, ZASLOW
		Thursday - Dec 7 1972				
Commonwealth Chemical	TRADING ACCOUNT	60	-	34	Con Godlan S. Pevzi c/o Yinchuk	Commonwealth Chemical
		Thursday - Dec. 14 1972				
FLACS, ZASLOW	PHYLLIS FEDER	520	12"	33	TRADING ACCOUNT	FLACS, ZASLOW
		Friday - Dec 29, 1972				
Commonwealth Chemical	DAVID SHERMAN	700	11:55	35	JACK KAGS	Commonwealth Chemical
		Wednesday - Jan 10, 1973				
Commonwealth Chemical	TRADING ACCOUNT	500	-1	35 7/16	MARCIA KLEIN (MAN)	Merrill, Lynch

. . .

call Lori Rukasin.

MR. DEVINE: Is it my correct understanding that you have ruled against the jury demand which has been filed in this case?

THE COURT: No one has asked me to move against it, but if somebody would I would surely strike it out.

I strike it out sua sponte. The plaintiff seeks totally equitable relief and you are not entitled to a jury here.

MR. DEVINE: It is my understanding that witnesses have already been excluded, but I want that on the record.

THE COURT: Any witness in the courtroom, please go back into the witness room.

Aren't you appearing this morning?

MR. FEDER: No, your Honor. My client settled.

L O R I R U K A S I N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARLMAN:

Q Are you known by any other names?

A No.

Q Have you ever been known by any other names?

A No.

Q Where do you reside?

A 1145 East 12th Street, Brookly, New York.

Q How long have you resided at that address?

A Nineteen years.

Q How old are you?

A Nineteen.

Q Are you currently employed?

A Yes, part-time.

Q What is the nature of your part-time employment?

A I am a law librarian.

Q Approximately how many hours a week do you work?

A Three.

Q How long have you been so employed?

A Two years.

Q Prior to that time, did you have any employment?

A No.

Q Are you related to any defendants in this action?

A Yes.

Q State who they are and your relationship.

A Robert Drucker, my brother-in-law, and Dorothy Drucker, my sister.

Q Did there ever come a time when you maintained any stockbrokerage accounts?

A No.

Q Did there ever come a time when you authorized any person to maintain a stockbrokerage account in your name?

A No.

Q Did there ever come a time when you heard of a company called Commonwealth Chemical?

A Yes.

Q What were the circumstances, if any?

A It was my brother-in-law's firm.

Q Did there ever come a time when you maintained a stockbrokerage account at Commonwealth Chemical?

A No.

Q Did there ever come a time when you authorized anybody to maintain a stockbrokerage account for you at Commonwealth Chemical?

A No.

Q Did there ever come a time when you heard of a company called Amherst Securities?

A No.

Q Did there ever come a time when you opened an account at Amherst Securities?

A No.

Q Did there ever come a time when you authorized

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anybody to open an account for you at Amherst Securities?

A No.

Q Did there ever come a time when you heard of a Mr. Michael Rekoon?

A No.

Q Did there ever come a time when you purchased any shares of Beneficial Labs common stock?

A No.

Q Did there ever come a time when you authorized anybody to purchase for you any shares of Beneficial Labs common stock?

A No.

Q Did there ever come a time when you purchased any warrants for Beneficial Labs?

A No.

Q Did there ever come a time when you authorized anyone to purchase for you any warrants of Beneficial Labs?

A No.

Q Would the same hold true of any sales for Beneficial Labs warrants?

A Yes.

Q Did there ever come a time when you purchased any units of Beneficial Labs?

A No.

Q Did there ever come a time when you sold any units of Beneficial Labs?

A No.

Q Did there ever come a time when you authorized --

THE COURT: Can't you put this all in one question?

MR. PEARLMAN: I could, your Honor, but I wanted to be as specific as I can.

THE COURT: I would think that would be a better way of doing it.

BY MR. PEARLMAN:

Q Did there ever come a time when you purchased and/or sold or authorized anyone to purchase and/or sell any shares, units, or warrants of Beneficial Labs?

A No.

Q Did there ever come a time when you learned that a brokerage account was being maintained in your name at Commonwealth Chemical?

A No. I knew of it. I didn't know that it was being for me, really, until the first subpoena.

Q When was that?

A Two years ago. A year and a half.

Q Relate the circumstances and what, if anything, you learned.

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A I got a subpoena.

Q From whom?

A I don't know.

Q Do you know if it was from the Securities & Exchange Commission?

A I suppose so.

At that time I talked to my brother-in-law and he told me.

Q What, if anything, did he tell you?

A That I was to appear for the subpoena if I wanted to and that my name was on stocks.

Q Did he tell you what stocks?

A Beneficial Labs, but I think the subpoena said Beneficial Labs on it.

B2 Q Had you at any time ever authorized your brother-in-law, that being Mr. Drucker, to place your name on shares of Beneficial Labs stock?

A No.

MR. DEVINE: Objection, your Honor. There is no foundation that he did so.

THE COURT: I will take it subject to connection.

Q Did there ever come a time when your brother-in-law asked you for authorization to place your name on shares of Beneficial Labs stock?

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MR. DEVINE: Same objection.

THE COURT: Same ruling.

Don't make any objection again. We will take it subject to connection. There is no showing that these were placed without authorization.

MR. PEARLMAN: I have no further questions of this witness, your Honor.

CROSS-EXAMINATION

BY MR. DEVINE:

Q Are you married?

A No.

Q What is your father's name?

A Irving Rukasin.

Q Where does he live?

A 1145 East 17th Street, Brooklyn.

MR. DEVINE: I have no further questions.

THE COURT: You are excused.

(Witness excused)

MR. PEARLMAN: I call next Mrs. Dorothy Drucker.

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D O R O T H Y D R U C K E R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARLMAN:

Q Mrs. Drucker, are you known, or have you been known, by any other names?

A My maiden name is Dorothy Rukasin .

Q Is your sister Lori Rukasin?

A Yes.

Q Where do you reside?

A 263 Castle Drive, Englewood Cliffs, New Jersey.

Q Are you married?

A Yes.

Q To whom?

A To Robert C. Drucker.

Q Is he a defendant in this lawsuit?

A Yes.

Q Do you have any children of your marriage to Mr. Drucker?

A Three children.

Q State their names.

A Cheryl, Susan, and Julie.

Q Are you employed?

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who is doing the speaking, and who said what to whom.

MR. PEARLMAN: I will move on from there.

Q Mrs. Drucker --

THE COURT: We will strike out what she said so far.

Q Did there ever come a point in time, Mrs. Drucker, when you maintained a brokerage account at Commonwealth Chemical?

A No.

Q Did there ever come a point in time when you maintained a brokerage account at any securities or brokerage firm?

A No.

Q Did there ever come a point in time when you purchased and/or sold or authorized and/or sold any shares of common stock units or warrants of Beneficial Labs stock?

A No.

Q Would that hold true for the account of your sister, Lori Rukasin?

A Yes.

MR. DEVINE: Objection.

THE COURT: Sustained.

Q Did there ever come a point in time, Mrs. Drucker, when you purchased, or sold, authorized, purchased, and/or

sold common stock units or warrants of Beneficial Labs stock?

A No.

Q Mrs. Drucker, did there ever come a time when you purchased and/or sold, authorized the purchase and/or sale of the common stock units or warrants of the Beneficial Labs stock for the accounts of your children?

A No.

MR. PEARLMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. DEVINE:

Q There came a time, did there not, when you understood, when you knew, that accounts were opened in your name at Commonwealth Securities, did there not?

A There came a time?

Q Yes.

A Yes.

Q You received statements and confirmations?

A No.

Q You never received a statement or a confirmation of your account?

A No.

Q Commonwealth Chemical Securities?

A No.

Q Do you know if your husband received such statements in your account?

A No.

MR. DEVINE: No further questions.

THE COURT: You are excused.

MR. BENOWITZ: The Commission now calls Vincent E. Caccesse.

V I N C E N T E. C A C C E S S E, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENOWITZ:

Q Be kind enough to tell the Court where you reside.

A 129 Glen Road, Staten Island, New York.

Q Are you currently employed?

A Yes.

Q Be good enough to inform the Court.

A M&M Cabinet Fronts, 652 66nd Street.

Q Is that in New York?

A Brooklyn.

THE COURT: M&M what?

THE WITNESS: Cabinet Fronts.

Q Did there ever come a time when you were

of A.C. Kluger. That was a new issue coming out on Beneficial Labs.

Q Did there ever come a time, during your employment at A.C. Kluger, when they maintained a market in Beneficial Labs?

A Yes.

THE COURT: Go right to the transaction: I direct your attention to such-and-such a date; tell us what happened on that date.

MR. BENOWITZ: I would like to establish, if the Court pleases --

THE COURT: So far I have heard forty questions and not one has moved the ball.

If you want to go ahead and do it your way and develop bad habits, go ahead.

MR. BENOWITZ: I will try to the get to the point immediately.

Q Did there ever come a time when you were the trader who was making a market for A.C. Kluger in Beneficial Labs?

A Yes.

Q Did there ever come a time when you were employed at A.C. Kluger when you heard of a Berkley Dean Special Fund

A Yes.

Q Do you recall the circumstances, if any, when you first heard of that?

THE COURT: I would like to hear some testimony from the witness.

THE WITNESS: I would like to have the question repeated.

Q Do you recall the circumstances by which you first heard of a Berkley Dean Special Fund?

A I received a call from Robert Drucker asking myself to open up an account with the Berkley Dean Special Fund, and he also gave me an order at the same time to purchase 8,000 shares of Beneficial Labs.

Q Do you recall what Mr. Drucker said to you and what you said to Mr. Drucker in this conversation?

MR. DEVINE: I object to this question. We have no time, place, or date.

THE COURT: Yes. Fix the time. When did this happen? Who was present? Was it in person or over the telephone? What was said?

Q Do you recall approximately the time period when you first spoke to Mr. Drucker about the Berkley Dean Special Fund?

A Offhand, I don't remember.

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your recollection as to the approximate date of the transaction you were speaking of?

A Yes.

Q Do you now recall what that date is?

A September 19.

Q What year?

A 1972.

Q Can you recall in that telephone conversation with Mr. Drucker, which you have testified to in part, exactly what Mr. Drucker said to you and what you said to him?

A Mr. Drucker asked me to go into the street to purchase 8,000 shares of Beneficial Labs for the Berkley Dean Special Fund, which I proceeded to do, or tried to do.

Q What, if any, instructions did Mr. Drucker give you concerning the execution of this transaction?

A Mr. Drucker told me to go out and check into the street as to the availability of 8,000 shares through the other market makers.

Q Did there ever come a time when you asked Mr. Drucker what, if any, authority he had to trade over half of the Berkley Dean Special Fund?

MR. DEVINE: He is leading the witness. Can't we get the conversation --

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THE COURT: I hope we can. I guess we can't. I have asked for it five times. Yes.

Sustained, if that's an objection. Leading.

MR. BENOWITZ: I would like to remind the Court up until five minutes before we came to court Mr. Caccesse was, in fact, a party to this action, and he signed a consent moments before we entered the court. Plaintiff has not had a chance to see Mr. Caccesse prior to then.

MR. DEVINE: He has been deposed in the case.

THE COURT: Don't ask leading questions. If he appears hostile, I will let you cross-examine; there is a right way and a wrong way to do it. Nobody knows how to do it right any more. I don't know what they teach in law school. Socioloy, I think.

B4 Q Mr. Caccesse, what steps, if any, did you take to execute this?

A I took the order from Mr. Drucker. I called up other market makers, and I tried to size the market, tried to find out if there was 8,000 shares available through the other market makers, and there was not. There was no stock available.

I then went back to Commonwealth Chemical and talked to Robert Drucker and told him I checked the market in

the street and there was no stock available.

He then asked me if I went into Commonwealth Chemical, if I got a market from Commonwealth Chemical. He said, "Check their market and see if they have the stock."

I called up Commonwealth Chemical and I asked them if they had 8,000 shares of Beneficial Labs for sale, and they told me that they did, and I bought the stock from them.

Q Did there ever come a time after you purchased the stock from Commonwealth Chemical when you spoke to Robert Drucker?

A Yes. After I purchased the stock from Commonwealth --

THE COURT: When?

THE WITNESS: On the 19th of September, 1972.

THE COURT: Where did you see him?

THE WITNESS: I didn't see him. I talked to him on the phone.

THE COURT: Please proceed.

A (Continuing) I called up Robert Drucker and told Robert Drucker that I bought 8,000 shares of Beneficial Labs from Commonwealth Chemical.

Q Do you recall what Mr. Drucker said to you?

A He acknowledged the fact that he knew already, that he knew the trade was consummated.

MR. DEVINE: I object and move to strike that answer. He didn't state what Mr. Drucker said. He indicated his acknowledgment.

THE COURT: What did he say?

Strike that answer.

Tell us what he said.

THE WITNESS: He laughed as if to say -- he laughed when I told him that the order was executed.

MR. DEVINE: I move to strike. The question was what he said.

THE COURT: Overruled.

MR. BENOWITZ: Thank you for your cooperation.

No further questions.

At this time I wish to move Plaintiff's Exhibit 1 into evidence.

THE COURT: Show it to your adversary when you say, "I offer it in evidence."

MR. DEVINE: May I have a voir dire on this?

VOIR DIRE EXAMINATION

BY MR. DEVINE:

Q Mr. Caccesse, is any of Plaintiff's Exhibit 1 for Identification in your handwriting?

A No.

Q Have you ever been an employee of Evans & Company?

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REGINA SINOFSKY, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ORMSTEN:

Q Are you employed?

A No.

Q What do you do?

A Housewife.

Q Did you ever hear of an individual known as Julius Kleinman?

A He is my brother.

Q Do you know if Mr. Kleinman has a connection with Commonwealth Chemical, a brokerage firm?

A Yes.

Q Did you ever maintain an account at Commonwealth?

A I understand that I had an account.

Q Do you know who, if anyone, decided whether to buy or sell stock in that account?

A My brother made all the decisions.

Q Did you ever tell your brother at any time you wanted to execute put and call transactions in Beneficial stock in that account?

MR. DEVINE: Objection. There is no foundation

that there were such transactions.

THE COURT: Taken subject to connection.

Q The Court will permit you to answer the question.

A I don't understand what "put and call" is.

MR. ORMSTEN: I have no further questions of this witness.

MR. DEVINE: No questions, your Honor.

THE COURT: You are excused.

MR. ORMSTEN: If the Court please, the plaintiff calls as its next witness Mr. Gerald Wolff.

MR. BENOWITZ: Your Honor, is it all right if Mr. Caccesse sits in the courtroom?

THE COURT: It is not.

G E R A L D I R A W O L F F, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENOWITZ:

Q Where do you reside?

A 14314 Burbank Boulevard, Van Nuys, California.

Q Are you currently employed?

A Yes, I am.

Q Be kind enough to inform us of the name and address of your current employer.

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transactions on behalf of them?

A Yes. Mr. Drucker called and asked me in the trading room at Cabot-Shaw if I could purchase 3,000 shares of Beneficial Labs common.

MR. DEVINE: Again we are getting into conversation without foundation.

THE COURT: That's right.

Q Do you recall the approximate date you spoke to Mr. Drucker concerning --

THE COURT: Off the record.

(Discussion off the record)

Q Mr. Wolff, you have been testifying about a conversation you had with Mr. Drucker. Do you recall the circumstances under which you had this conversation?

THE COURT: When was the conversation?

THE WITNESS: Late February of 1972.

THE COURT: Where did you have the conversation?

THE WITNESS: I was in the trading room at Cabot-Shaw, Inc.

THE COURT: Who was present at this conversation?

THE WITNESS: Myself.

THE COURT: Who else?

THE WITNESS: No one.

THE COURT: You can't have a conversation with

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yourself.

THE WITNESS: I was on the telephone with Mr. Drucker.

THE COURT: What did he say and what did you say?

THE WITNESS: Mr. Drucker asked me if I, as a representative of Cabot-Shaw, could buy 3,000 shares of Beneficial Labs common at 11½ from the New York Hedge Fund, and that he would try to find a home for it later on.

THE COURT: What did you say?

THE WITNESS: I told him that I would, in fact, have to consult with my employer, Darold Shirwo.

THE COURT: What did he say to that?

THE WITNESS: Fine, that I should call him back and let him know.

THE COURT: Did you call him back?

THE WITNESS: Yes. After speaking with Mr.Shirwo— Mr. Shirwo asked me why Mr. Drucker could not purchase the stock himself. He had said he would be breaking a rule, and I explained that to Mr. Shirwo, and Mr. Shirwo said if we could get 1/8 of a point profit on the transaction we would be happy to do it.

THE COURT: Did you carry out this transaction?

THE WITNESS: Yes.

THE COURT: What did you do?

THE WITNESS: We bought 3,000 shares of Beneficial common at 11½ from the New York Hedge Fund and sold it at 11-5/8 approximately a day later to Commonwealth Chemical Securities.

THE COURT: Did you have any subsequent conversation with anyone about that?

THE WITNESS: Mr. Drucker confirmed the transaction with me.

THE COURT: How?

THE WITNESS: Over the telephone and in writing by confirmation slips.

BY MR. BENOWITZ:

Q Did there ever come a time during your employment with Cabot-Shaw when you heard of an entity called Vanguard Fund?

A Yes.

Q What, if any, transactions did you execute on behalf of the Vanguard Fund during your employment?

A Mr. Drucker told me -- I knew that Commonwealth Chemical was long 5,000 shares of Environmental Devices, and Mr. Drucker asked me if we would buy the 5,000 of Environmental Devices.

B6 MR. DEVINE: Objection. The same foundation

objection, your Honor. We are getting into another conversation.

THE COURT: Sustained.

Q Do you recall the approximate period of time when you had this conversation with Mr. Drucker?

A Again, late February of 1973.

Q Did Mr. Drucker speak to you in person or were you on the telephone, or did you communicate by any other means?

A I was on the telephone.

Q Do you recall whether Mr. Drucker called you or you called him?

A I believe Mr. Drucker called me.

Q Where were you when you received this call?

A In the trading room.

Q Who, if anybody else, was listening to this telephone conversation, as far as you know?

A No one, to the best of my knowledge.

Q Can you relate to the Court what Mr. Drucker said to you in his telephone conversation and what you said to him?

A Mr. Drucker asked me if Cabot-Shaw could purchase 5,000 shares of Environmental Devices from Commonwealth Chemical Securities and sell the 5,000 shares of Environmental

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Devices to the Vanguard Fund, and at that point I asked him if he had the authority to act on behalf of the Vanguard Fund, and he related to me that he did, and to prove that he did he was going to have a member of the Fund call me and confirm the transaction.

Approixmately fifteen minutes later Mr. Kleinman called me and said that he was at a bank, or with a bank in Philadelphia, and that we should have 5,000 shares of Environmental Devices delivered to the American Bank Trust Company in New York City against payment.

Q Did there ever come a time when this trade was executed?

A Yes.

Q Do you recall the time when it was executed?

A Late February of 1973.

Q Mr. Wolff, what, if any, other transactions did you execute in Beneficial Labs as a result of conversations with Drucker when employed at Cabot-Shaw?

MR. DEVINE: Objection. Leading.

THE COURT: Overruled.

What, if any?

Q Answer the question.

A Yes. We were involved, Cabot-Shaw and Commonwealth Chemical, myself, Mr. Drucker, and Mr. Shirwo had

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entered into negotiations on a swap transaction.

THE COURT: When?

THE WITNESS: Approximately the second week in February of 1973.

THE COURT: How?

THE WITNESS: Over the telephone.

THE COURT: Who was on the phone and what was said?

THE WITNESS: At various times Mr. Shirwo was on the phone with Mr. Drucker and myself. At various times I was on the phone with Mr. Drucker, and at various times the three of us were on the phone.

Q You have used the term "swap transaction." Be good enough to define that within the context you just used it.

A In this particular transaction it was meant to be an almost dollar-for-dollar exchange of stock.

Q Do you recall if there came a time when the swap transactions were executed?

A Yes.

Q Do you recall approximately what --

A Late February of 1973.

Q Did there ever come a time when you spoke to Mr. Drucker with respect to the swap transactions?

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A Yes.

Q Do you recall what Mr. Drucker said to you and what you said to him?

A Yes.

MR. DEVINE: May we have the time of the conversation.

Q Do you recall when you spoke to Mr. Drucker in this particular conversation?

A The original conversation leading up to the swap transactions occurred probably the second week of February, 1973.

Q Approximately how many telephone conversations did you have with Mr. Drucker up until the point of time that the trades were executed?

A Probably four or five regarding the situation.

Q In what period of time did you have these four or five conversations with Mr. Drucker?

A Over a week or 10-day period.

Q Were these conversations with Mr. Drucker via telephone?

A Yes.

Q Did there come a time when you called Mr. Drucker and he called you?

A That's right.

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Q Can you now recall for the Court what you can remember from your first conversation with Mr. Drucker as to what you said to him and what he said to you?

A Mr. Drucker asked me if I would like to relieve the pressure on Environmental Devices by selling 10,000 to 12,500 shares of Environmental Devices, and I was so startled that this situation had arisen that I asked him who I had to kill to do it. I told him that I would love to.

He said I didn't have to kill anybody, and he asked me if I had ever heard of a stock by the name of Beneficial Labs, and I said, yes, from a previous conversation with one of his employees.

He asked if I had ever seen the papers on Beneficial Labs and I told him no.

He, at that point, suggested that he send me the papers on Beneficial Labs and that I send him the papers on Environmental Devices.

Q Did there ever come a time when you related the substance of your conversation with Mr. Drucker to anybody else that was employed at Cabot-Shaw at that particular time?

A I related that to both Darold Shirwo and Mr. Mort Ruden.

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Q Do you recall what particular point of time you spoke to Mr. Shirwo and Mr. Ruden with respect to the conversation you just testified to?

A Instantaneously after.

Q Can you recall what you said to them and what they said to you?

MR. DEVINE: Hearsay, your Honor. Objection.

THE COURT: Hearsay.

Q Do you recall what you said to Mr. Shirwo?

A Yes, I can.

MR. DEVINE: Objection. Hearsay.

THE COURT: Overruled.

What did you say to him, not what he said to you.

THE WITNESS: I said to Mr. Shirwo that we had an opportunity to relieve some of the pressure that was being put on Environmental Devices by selling 10,000, maybe 12,000, shares of that stock to our brokerage firm, I assumed, and I also told him that we had to get the paper on Environmental Devices out to this brokerage firm.

Q Did there ever come a time when you had further discussions with Mr. Drucker concerning this swap transaction?

A Yes.

Q Can you recall when you had your next conversation with Mr. Drucker?

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A I believe it was the Monday after we sent the paper out to him.

Q Can you recall if Mr. Drucker called you or if you called Mr. Drucker?

A I believe that I was already on the phone with Commonwealth Chemical Securities.

Q Can you relate to the Court what you said to Mr. Drucker and what he said to you in the second conversation?

A Mr. Drucker at that point asked me if we had received a paper on Beneficial Labs, and I said yes.

At that point I called Mr. Shirwo in, and we were in on a three-way conversation, and Mr. Shirwo asked Mr. Drucker if Beneficial Labs was blue skied in the State of California, and Mr. Drucker said no, it was not, and we were -- I asked Mr. Drucker if it was not blue skied in the State of California how could we retail the stock, and he said that we could not, and that if we did make a transaction he would assume that it had to stay in the trading account, unless, in fact, we found a purchaser outside of the State of California in a state where the stock was blue skied.

B7 Q What, if any, conversations did you have with Mr. Drucker concerning the manner by which the swap

transactions were to be executed?

MR. DEVINE: Objection. Leading question, your Honor.

THE COURT: Overruled.

A Originally, Mr. Drucker and myself had discussed the possibility of a share-for-share, which it turned out would be quite ridiculous since Mr. Drucker was, in fact, referring to Beneficial Lab units rather than the common or the warrants as a separate entity. Of course, the units were selling at that time at approximately $31 a share whereas Environmental Devices was selling at approximately 7½.

Q Do you recall what you said to Mr. Drucker and what he said to you concerning --

A Mr. Drucker, basically, asked me if I had any other ideas as to how a swap could be transacted, and I said to Mr. Drucker that I didn't have the authority to finalize anything, and that Mr. Shirwo had to get in on the conversation, and at this point in time I called Mr. Shirwo, who was in his office, who came back to the trading room and picked up our extension phone, and there was a three-way conversation. From time to time I had to jump over the phones to answer other telephones.

Q What, if anything, do you recall during that period of time in this conversation when you were on the

telephone?

A About the only thing that I can recall is that prices were discussed relative to the current market which at the time, I believe, was 31 on Beneficial Labs and 7-3/4 on Environmental Devices. Both were saying, and I was involved in this particular conversation, that we wanted to buy each other's stock as close to the bid price as possible.

Q Did there ever come a time in connection with these transactions, Mr. Wolff, when you heard of a person by the name of Joseph Arner?

A Yes. As part of the swap transaction Mr. Arner was going to call me and buy 5,000 shares of Environmental Devices.

Q Can you relate to the Court how you found out that Mr. Joseph Arner was to call you?

A Mr. Drucker told me that Mr. Arner was going to call.

Q Was this in a conversation with Mr. Drucker over the telephone?

A Yes. This was on the day that the swap was finalized.

Q Did there ever come a time when, in fact, a person by the name of Joseph Arner contacted you?

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A To the best of my knowledge, he called me and asked me what I thought of Environmental Devices, at what price he could purchase 5,000 shares, and did I think it was a good purchase for him.

Q Do you recall what you said to Mr. Arner in this conversation?

A Yes. I told him that I was not his broker and that I was making a transaction with him as an accommodation, and if he was buying the stock, or wanted to buy the stock, at the suggestion of Mr. Drucker, that was his concern and not mine, and I was not going to give him an opinion one way or the other.

Q Did there ever come a time when you sold stock to him?

A I sold 5,000 shares of Environmental Devices at 7-3/4 to Mr. Arner.

Q Was that transaction a part of the swap transactions you have described?

A Yes.

MR. DEVINE: Objection. It calls for a conclusion.

THE COURT: Overruled.

Q Did there come a time when the swap transactions, as you described them here today, were, in fact, executed?

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A Yes.

Q Do you recall the approximate period of time that these transactions were executed?

A Yes. It was late February, 1973.

Q I show you what has been marked as Plaintiff's Exhibit 4. Would you identify that to the Court.

A Yes. The top portion of this is a copy of an original ticket whereby Cabot-Shaw bought 3,000 Beneficial Labs common at 11½ from the New York Hedge Fund, and the bottom half is the confirmation that goes out to the customer.

Q Did you ever see that before today?

A Yes, I have.

Q Do you recall the first time when you saw those two documents?

A When I wrote one of them -- when I wrote the original copy of the ticket, and then, at the proceeding testimony that I --

Q Look at the second page of Plaintiff's Exhibit 4, please, and I ask you if there came a time prior to today when you saw this.

A Yes, when I wrote the ticket.

Q Look at the third page of Plaintiff's Exhibit 4 --

THE COURT: Are these records kept in the

COURTHOUSE

regular course of somebody's business? Use the statute. It takes two questions and not forty.

MR. DEVINE: It is my understanding that these were admitted.

THE COURT: If they are in evidence I could read them, I suppose.

MR. BENOWITZ: All right.

THE COURT: What are we asking questions about?

MR. BENOWITZ: I wanted it on the record that there were portions of Plaintiff's Exhibit 4 which are in Mr. Wolff's own handwriting.

Q Mr. Wolff, would you be kind enough to inform the Court by pages which portions of those pages comprising Plaintiff's Exhibit 4 have your handwriting.

A On Page 4, the account named, the contra name, the contra number --

THE COURT: Is there any dispute about this?

MR. DEVINE: No, your Honor.

MR. BENOWITZ: Thank you.

No further questions.

THE COURT: We will take a short recess.

MR. BENOWITZ: Your Honor, I do have a few more questions I would like to ask him. May we do that after the short recess?

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THE COURT: Do it now.

BY MR. BENOWITZ:

Q Did there ever come a time prior to today when you gave testimony in connection with this matter?

A Yes.

Q Do you recall the number of occasions when you so testified?

A They were twice.

Q Was the testimony you gave on those two occasions truthful and accurate?

A No.

MR. DEVINE: Objection, your Honor. Irrelevant. He is impeaching his own witness.

THE COURT: Overruled.

Q Do you recall approximately the dates of your prior testimony?

A The first time was approximately in September of 1973, I believe.

Q And the second time?

A It was in November of 1974.

Q What, if any, differences were there between your first testimony and your second testimony?

A Due to extreme financial pressures and marital infidelities which certain people were aware of, I had

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extraneous pressure put on me by some people to omit or to forget or to not remember correctly certain portions of transactions that, in fact, were involved.

Q Be kind enough to relate to the Court the kind of specific pressures you are talking about.

A Mr. Darold Shirwo, who was my immediate superior, had informed me that it would be better for all concerned if we, in fact, just said that they liked our stock and we liked their stock, and that was the reason that we got involved in the transaction to begin with.

B8 Q What, if any, other pressures did Mr. Shirwo bring on you?

A He has been known to engage in a little bit of drinking from time to time, and most of the time he has a tendency to overdo it. When he does -- I have seen him carry a gun many times; at one particular conversation we were taking a ride down in an elevator and he was just spewing that he was madder than hell and he felt like getting his gun and killing somebody, and he was making all kinds of remarks that just scared the hell out of me, and he used the fact that I was under the veil of Cabot-Shaw's attorney who --

Q Is the testimony you gave in court today the truthful and accurate, to the best of your recollection?

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A 100 percent.

MR. BENOWITZ: No further questions.

THE COURT: We will take a short recess.

(Recess)

MR. DEVINE: Your Honor, I have no questions of Mr. Wolff.

However, I would like to have Mr. Caccesse brought back to the stand.

THE COURT: We will excuse Mr. Wolff and have Mr. Caccesse brought back.

(Witness excused)

V I N C E N T E. C A C C E S S E, resumed:

CROSS-EXAMINATION CONTINUED

BY MR. DEVINE:

Q Mr. Caccesse, do you recall being deposed in this action on December 18, 1974?

A Yes.

Q I am going to read to you a series of questions and then I want you to listen to them. When I finish I want you to tell me whether you recall hearing those questions and giving those answers.

A Yes.

Q (Reading:)

"Q How many times did you speak to him on that

there was a public offering of Beneficial Laboratories?

A Yes.

Q Do you know who the underwriter of the stock was?

A Commonwealth Chemical.

Q Did you ever have a discussion concerning that public offering with a Mr. Robert Drucker?

A Yes.

Q Approximately when did you have that discussion?

A Not too long after I started working there, I guess.

Q Which would be about when?

A I started in January of 1972. I don't remember the exact time when.

Q Was it in the month of January?

A January, Febr ary -- something like that.

Q Was the conversation in person or on the telephone?

A In person.

Q Would you relate to the Court the contents of that conversation.

A Bob Drucker asked me if I could give him some names of friends of mine, and I assumed -- I don't remember whether he had mentioned Beneficial stock in that conversation or we had just been talking about it, and therefore

I assumed that's what he was talking about. He asked me if I had any girlfriends' names which I could give him in regard to the stock.

Q Did you give him any such names?

A Yes.

Q Do you recall what those names were?

A Yes. They were Shiela Goldberg, Sherry Ashen, Alice Greenblatt, and May Boylan.

THE COURT: You say in regard to the stock. In what regard?

THE WITNESS: Well, I thought Bobby wanted --

THE COURT: What did he say?

THE WITNESS: I don't remember the exact conversation from four or five years ago, sir.

THE COURT: The substance of it.

THE WITNESS: The substance was that he wanted names of girls that he could send out information or contact in regard to buying the stock.

Q Do you know of your own knowledge if any of the four girls you just mentioned ever purchased Beneficial stock?

A From my own knowledge they never did.

MR. ORMSTEN: I have no further questions of this witness.

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CROSS-EXAMINATION

BY MR. DEVINE:

Q On how many different occasions did you and Mr. Drucker discuss the Beneficial Labs offering?

A I don't think Bob and I spoke about it -- I was in the office with him. I worked there, but I don't ever remember him discussing it with me.

Q You have no memory of any discussions with him about Beneficial Labs?

A Nothing specific. Again, I worked for Bobby. I was in the same office with him. I shared his desk. I'm sure there were conversations about the stock going on when I was in the office, but who was I for him to discuss the offering with! I was meaningless, as far as I was concerned.

MR. DEVINE: No further questions.

THE COURT: Tell us about these four. You just told us about the four girls.

THE WITNESS: Other than that conversation?

BY MR. DEVINE:

Q When was this conversation?

A About the four girls?

Q Yes.

A As I said, I think it was shortly after I

M I C H A E L R E K O O N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENOWITZ:

Q Did there ever come a time when you were employed in the brokerage business?

A Yes.

Q Did there ever come a time when you were employed as a trader at A.C. Kluger & Company?

A No.

Q Did there ever come a time when you were employed at Amherst Securities?

A Yes.

Q Can you recall the specific period of time you were so employed?

A I believe it was 1971-1972.

Q In what capacity were you so employed at Amherst Securities?

A Trader.

Q Did there ever come a time when you were employed by a broker-dealer by the name of Flaks Zaslow?

A Yes.

Q Do you recall the period of time when you were

so employed there?

A Yes.

THE COURT: What did you do there?

THE WITNESS: I was a trader.

THE COURT: Did you have any trades connected with Commonwealth Securities?

THE WITNESS: Yes.

THE COURT: What were they and when did they take place?

MR. BENOWITZ: I believe, your Honor, I have questions for him pertaining to, basically, his trades at Amherst Securities.

THE COURT: All right.

BY MR. BENOWITZ:

Q Mr. Rekoon, did there ever come a time when you heard of an entity by the name of Berkley Dean Special Fund?

A Yes.

Q Did there ever come a time when you entered any transactions on the part of the Fund?

A Yes.

Q How did you come to execute such transactions?

A I got a call from the Fund to either buy or sell securities for them.

Q Whom did you speak to? Who was representing the Fund?

A Usually it was Bob Drucker.

Q Did there ever come a time when you heard of a woman named Lori Rukasin?

A Yes.

Q In what connection did you hear of Miss Rukasin?

A On a Beneficial Labs trade.

Q Do you remember the specific trade?

A Yes. She sold seven thousand shares of Beneficial Labs.

Q Can you recall approximately what time she did this?

A No. I cannot give you an exact date.

Q Do you recall if you ever had any conversation with Miss Rukasin?

A No. I'm not sure whether I did have exact words with Miss Rukasin.

Q You stated you sold some Beneficial Labs on her account?

A Yes.

Q How did you come to sell that? On whose authority?

A I'm not sure whether she called or Bob Drucker called at the time.

Q Was this in connection with any other trade at that time?

A She sold 7,000 shares of Beneficial.

Q Whom did you sell that to on her behalf?

A I believe one of the funds bought them.

Q Which fund? Do you recall?

A No. Either Vanguard or Berkley Dean. I'm not sure which.

Q Do you recall who gave you the instructions to purchase those shares on behalf of the Berkley Dean Special Fund?

A Probably Bob Drucker. I don't remember exactly. Normally he is the one that would call.

MR. DEVINE: I move to strike.

THE COURT: What did you have to do with this case? When, where, and what?

THE WITNESS: I found out that I did a trade with Lori Rukasin.

THE COURT: Who is she? Is she a lady?

THE WITNESS: Yes.

THE COURT: What trade did you do with her?

THE WITNESS: I bought some 7,000 shares of Beneficial Labs.

THE COURT: From her?

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THE WITNESS: Yes.

THE COURT: How?

THE WITNESS: I don't know whether she called or Bob Drucker called to sell the stock, but one of the two called and I bought the stock.

THE COURT: She was the seller of it?

THE WITNESS: It was her name that the confirmation went out in.

THE COURT: What else? Did you have any conversation with her about this?

THE WITNESS: I don't ever remember having one. Possibly at the time we did the trade she might have called to give information, but I don't recollect that.

THE COURT: Did you have any other trade in the stock?

THE WITNESS: In Beneficial Labs.

THE COURT: When?

THE WITNESS: I was a market maker in the stock. Occasionally I would buy and sell the stock form other brokers.

THE COURT: You may proceed.

BY MR. BENOWITZ:

Q What, if any, arrangements did you have with Mr. Drucker with regard to trading the stock?

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questions you people have asked here are irrelevant, and I know what the depositions are. They are terrible.

MR. ORMSTEN: With respect to the deposition of Mr. Drucker, we are offering in --

THE COURT: Are you ready to proceed?

MR. ORMSTEN: Only as an admission, Page 16 of the deposition taken on September 30th, 1974.

THE COURT: Read it into the record.

MR. ORMSTEN: (Reading:)

"Q Mr. Drucker, recognizing that you have not yourself answered the question and taking account of counsel's objection, I ask you if the books and records of Commonwealth at any time ever reflected as purchasers of the Beneficial units during the underwriting individuals who did not themselves, in fact, pay for thos units?

"MR. DEVINE: To your knowledge.

"MR. ORMSTEN: To your knowledge.

"MR. DEVINE: You can answer that.

"A Yes, there were certain transactions."

That is our offer in respect to this deposition in respect to that defendant.

THE COURT: All right. Any other?

MR. COHEN: We offer the investigatory transcript of Zoltan Guttman taken on June 13th, 1973. I have extracted

pgds

the relevant portions.

Page 33:

"Q Have you ever been a shareholder in Beneficial Labs?"

Page 34:

"A Evidently --"

B11 MR. DEVINE: Objection, your Honor. The question on Page 33 is at Line 15 and now he is jumping over to someplace on the bottom of Page 34.

MR. COHEN: If you would like, I will be happy to read the entire part.

If I may, I will read it then:

"Q Have you ever been a shareholder in Beneficial Labs?"

MR. DEVINE: Objection, your Honor. This calls for hearsay. This is not an admission.

THE COURT: Overruled.

MR. COHEN: (Reading:)

"A Did I own any shares?

"Q Yes.

"A What do you mean by being a shareholder in Beneficial Labs?

"Q A shareholder is a person who owns shares in a corporation.

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"Have you ever been one for Beneficial Labs?

"A Well --

"MR. CHERNIS: That's not a hard one.

"Do you want to talk about it?

"THE WITNESS: Yes, I would appreciate it.

"MR. MIHALEK: Feel free.

"Let's go off the record here. At anytime you want a conference, you just tell me and you can leave the room and conference or sit here and conference or do whatever you want."

THE COURT: Come on. Not all that.

MR. COHEN: That's what I tried to explain.

THE COURT: I will take a motion to strike it.

MR. DEVINE: I move to strike that.

THE COURT: Strike it.

We will have a short recess.

(Recess)

THE COURT: Do you have any more witnesses?

MR. ORMSTEN: We have these offers and we have one more witness for today, your Honor. We have left a subpoena with the defendant John Feldman, and that's the case.

The Commission's witness, Mr. Bienenstock, is across the street.

THE COURT: Get him. He should be in the

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courtroom. I have other things to do than wait for people to cross the street.

MR. COHEN: Your Honor, if I may, I will go on.

THE COURT: I think I have had enough. I will not listen to this.

MR. ORMSTEN: Mr. Cohen attempted to skip. Counsel objected to the skipping.

THE COURT: I didn't say to read it.

MR. COHEN: If I may, I will skip it and not read it.

On Page 34, the answer to the question on Page 33:

"A Evidently the purport of your question, as I understand it, is pertaining to the 1,000 shares in Sylvia Pavel's account.

"Sylvia Pavel is a cousin of mine.

"A thousand shares in her account was purchased with funds -- with my funds, basically. Sylvia and I, being cousins and very close and all that, I am the -- how shall I say it?

"MR. CHERNIS: Beneficial?

"A -- beneficial interest. Basically, the stock is for my interest."

Next I turn to Page 43:

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"BY MR. MIHALEK: --"

MR. DEVINE: Your Honor, he did not read the whole answer.

THE COURT: You can read any part of it that you want.

MR. COHEN: (Reading:)

"Q Did any other person, that is, other than yourself, ever supply funds for the purchase of securities in the Sylvia Pavel account at Commonwealth?

"A No other person.

"Q To the best of your knowledge, did Sylvia Pavel, or any other person other than yourself, place orders to purchase or sell securities in this account?

"Q No."

Page 61:

"Q Did you have any profit-sharing arrangement with Sylvia Pavel or anyone else from the Pavel account?

"A Well, Sylvia and I have -- as I said, it's a loose arrangement, in a way where I -- well, we will eventually in the future -- I know I'm indebted to her, no specific dollar value."

Page 63:

"Q Would you clarify that? I don't understand that.

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"MR. CHERNIS: ***

"Any obligation to Pavel by virtue of that money and the profitability of that transaction is really in his mind rather than expressed in a writing or in a, you know, straight-forward verbal agreement with Pavel."

MR. DEVINE: I move to strike. This is a statement by the man's attorney offered as an admission by the party.

MR. COHEN: If I may, your Honor, there is the next question by Mr. Mihalek:

"Q Do you adopt and affirm as your own testimony the statement made by counsel?

"A I so adopt it."

Page 77:

"Q What was the name of the account again?

"A I believe it was Sylvia Pavel, Custodian for Sara."

Page 78:

"Q And was this an account that you established at Commonwealth?

"A At Commonwealth Chemical Securities, yes."

That's it, your Honor.

MR. DEVINE: I move to strike all of that testimony, your Honor. It does not constitute an admission,

and it was not taken in a deposition in this case at which counsel were advised by notice of taking of deposition or given an opportunity to cross-examine.

THE COURT: Denied.

MR. DEVINE: Your Honor, I would like to read --

THE COURT: You can read any part of it.

MR. DEVINE: Page 35, the full answer: --

THE COURT: You were present?

MR. DEVINE: I was not. His deposition was not taken in this case.

THE COURT: Was that testimony before the SEC?

MR. COHEN: Yes. It is an investigatory transcript. Mr. Chernis was present.

MR. DEVINE: The balance of the answer that was omitted on Page 35, beginning at Line 3 through Line 7:

"Sylvia and I, as I said, being cousins -- and I'm indebted to them in the future for a certain amount of funds. It's a very loose understanding between the two of us."

That was omitted, your Honor.

MR. PEARLMAN: We would like to read in those sections of the deposition of Nellie Pyles, your Honor. I refer you first to Page 6:

B12 "Q What if any children do you have of this prior marriage?

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"A Two daughters.

"Q What are their names?

"A Mary Catherine and Dana Faye.

"Q Mary Catherine, is she presently married?

"A No. Mary Catherine Sharp."

Page 8, Line 7:

"Q Mrs. Pyles, did there ever come a time when you opened a securities brokerage account at a broker-dealer?

"A No."

Page 10:

"Q Did there ever come a time when you authorized somone to open an account for your benefit at Commonwealth Chemical Securities, Incorporated?

"A No.

"Q Did there ever come a time when you purchased any securities from Commonwealth Chemical Securities?

A No."

Page 11:

"Q Mrs. Pyles, did you ever hear of a firm called Beneficial Labs, Inc.?

"A No."

Page 12, Line 6:

"Q Did there ever come a time when you purchased any securities at Beneficial Labs?

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"A No."

Line 13:

"Q Did there ever come a time when you authorized anyone to purchase securities of Beneficial Labs on your behalf?

"A No."

Page 19, Line 17:

"Q Did there ever come a time during this conversation with your daughter, Mary Sharp, when the name Beneficial Labs came up?

"A Well, that was what I asked her about, Beneficial Labs, so that was the name that was mentioned by Mr. Moylan.

"Q In what manner did your daugher, Mary Sharp, respond when you inquired?

"A As well as I recollect, she said she had bought some in my name."

Page 20, Line 14:

"Q Mrs. Pyles, did there ever come a time when you paid for the purchase of any securities at Commonwealth Chemical Securities?

"A No.

"Q Did there ever come a time when you authorized anybody to pay for securities on your behalf at Commonwealth Chemical Securities?

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"A No."

Line 24:

"Q Mrs. Pyles, did htere ever come a time when you learned that the Beneficial Labs purchased on your behalf was sold?

"A I had a conversation with Mary and she told me she had sold them. All this didn't mean anything to me."

Line 12:

"Q Did there ever come a time when you authorized your daughter to sell Beneficial Labs securities in your behalf?

"A No."

Page 23, Line 9:

"Q Did there ever come a time when you assigned power of attorney to any individuals?

"A No.

"Q Did there ever come a time when you authorized anybody to receive any payment from any brokerage firm on your behalf?

"A No."

THE COURT: Do you wish to read anything?

MR. DEVINE: Your Honor, I don't have that transcript in front of me. I would like to reserve my rights after the luncheon break to do so.

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his way over right now. He will be here in two minutes.

In fact, your Honor, I am told that he is outside right now.

MR. PEARLMAN: The Commission now calls Alexander Bienenstock.

A L E X A N D E R B I E N E N S T O C K, called as a witness by the plaintiff, being first duly affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. BENOWITZ:

Q Where are you currently employed?

A United States Securities and Exchange Commission.

Q In what capacity?

A Chief Attorney, Branch of Small Issues in the New York Regional Office.

Q Can you describe for the Court what your responsibilities encompass as Chief Attorney for that branch?

A I am in charge of processing all Regulation A filings covering New York and New Jersey.

Q Please tell the Court if you were employed in 1971.

A Yes.

Q Tell the Court where you were so employed.

A I was employed in the Branch of Small Issues as

Mr. Feldman had to the Beneficial offering?

A Yes. He was the president of Beneficial.

Q Did there ever come a time when you met him?

A Yes.

Q Do you recall when you met Mr. Feldman?

A Yes. I met him at the due diligence conference held at my office.

Q Do you recall approximately what time of the year that due diligence conference was held?

A Yes. It was December of 1971.

Q Tell the Court what you mean by "due diligence conference."

A Before a file is declared effective a due diligence conference is held to give the company and underwriter, if there is one, an idea of how the offering should proceed, how the shares should be sold.

Q Do you recall if anyone else other than Mr. Feldman was present at this due diligence conference?

A Yes. His attorney Alan Geis, Julius Kleinman from Commonwealth Chemical, who was the underwriter, and there was Emanuel Brown, the counsel for Commonwealth.

Q Do you recall, Mr. Bienenstock, what you said at this due diligence conference?

A No. I cannot recall what I said at that particu-

lar due diligence conference.

I have a check list which I use in regard to every due diligence conference that I hold.

Q You say the same thing at every due diligence conference?

MR. GOLDSTEIN: Objection, your Honor.

THE COURT: Overruled.

Q Answer the question.

A It depends on the particular terms of the offering.

Basically, it involves the same particular situations that are covered in the sale of securities.

Q Approximately how many due diligence conferences have you held to the present from the time you started your employment at the SEC?

A I would say approximately 250.

Q What is the purpose of a due diligence conference?

A The purpose is to see that the offering is conducted according to the securities laws and that the securities laws are not violated.

Q What, if anything, from your memory, does your check list say which you use at a due diligence conference with respect to a mini-maxi offer.

MR. DEVINE: Objection as to relevancy.

MR. GOLDSTEIN: The same, your Honor.

(Record read)

THE COURT: Overruled.

Q Answer the question.

A In case of a mini-maxi -- and this is one of the most important aspects of the due diligence conference -- if we have a mini-maxi offering with a particular offering period and a particular period in which to raise at least a minimum number of dollars from the offering, what I do stress is that the minimum funds, in other words, the gross amount that should be received from the minimum number of shares as set forth in the offering circular, must be in the special account or the escrow account by the termination date of the offering. In the event that such minimum amount is not in the bank by that date, all funds received from subscribers must be returned.

Q What, if anything, do you say with regard to a mini-maxi offering if there is a possibility that the closing can occur after the whole offering is sold, the minimum number is sold, rather --

MR. DEVINE: I will object to this line again. I am sorry to repeat it. I want to make myself clear: This witness did not recall the due diligence meeting with respect to Beneficial Labs. They are now trying to get

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Exhibit 6.

A This is the signatures of individuals who appeared at the due diligence conference conducted by myself on December 13th, 1971 in regard to the Reg.A offering of Beneficial Labs.

Q When did you first see this document?

A Well, I saw it on December 13th, 1971, when I prepared it.

Q Whose signature appears on the document?

A The individuals who were present at the due diligence conference: Emanuel Brown, Julius Kleinman, John Feldman, and Alan Geis.

xx (Plaintiff's Exhibit 7 marked for Identification)

Q I show you what has been marked as Plaintiff's Exhibit 7 for Identification. Did there ever come a time prior to today when you saw this document?

A Yes.

Q Can you relate to the Court what that document is?

A This is the offering circular of Beneficial Labs.

Q When is the first time you saw that document?

A Well, the first time I saw the document in this form --

MR. DEVINE: If this is testimony for the

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purpose of foundation on this document, we will concede its admissibility.

THE COURT: It will be received.

A (Continuing) -- on or about December 20th, 1971.

THE COURT: Did you have it before you at the due diligence conference?

THE WITNESS: Yes.

xx (Plaintiff's Exhibit 7 received in Evidence)

THE WITNESS: I take that back, your Honor. I believe I had a form of offering circular, which was not in the final form that you see there. I had an offering circular containing that information.

THE COURT: Was it a draft of this one?

THE WITNESS: Yes.

Q What, if anything, can you now recall with respect to anything you said at the due diligence conference pertaining to Beneficial Labs with respect to the minimum amount of securities to be sold?

MR. GOLDSTEIN: Objection, your Honor. That has been asked and answered. The witness has testified fully, directly and indirectly. It is repetitious.

THE COURT: Overruled.

A I do recall a little more now than what I indicated at first. The reason that that --

THE COURT: Does this refresh your recollection?

THE WITNESS: Yes.

THE COURT: To what you said? See if you can tell us what you said. Take the document, if you wish, and refresh your recollection and give us the conversation as to what you said and what other people said.

THE WITNESS: In regard to what aspect of the due diligence conference?

Q Anything you may have said concerning the special account and the minimum amount of securities that had to be sold.

A I indicated that funds representing 50,000 units would have to be in the bank within 90 days from the date of this offering circular. If funds were not in the bank by such date, the amount of funds received from the date of the offering circular would have to be returned to subscribers in full.

MR. DEVINE: I would like to make it clear, again, that I have a standing objection to his interpretation of the document.

THE COURT: Overruled. He is telling us what he said.

Q What, if anything, did you say, Mr. Bienenstock, with respect to the minimum amount of funds in the special

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account and a closing?

A I indicated that $100,500 would have to be in the bank by 90 days from the date of the offering circular.

THE COURT: He has told us that four times already.

Q Do you understand the question? I asked you what, if anything, did you say at this particular due diligence conference in regard to the funds in a special account and a closing?

A I indicated that as soon as the minimum number of units was sold, that the closing should take place forthwith.

Q Did the minimum amount of funds have to be in the special account at the time of the closing?

A Yes.

MR. DEVINE: Objection, your Honor. Same objection.

THE COURT: I will let it stand.

Q What, if any, relation did the closing date have to do with the date on the prospectus, the 90 days printed on the prospectus?

A That would be the last date on which the shares could be sold, according to the offering survey.

Q Is it possible on this particular offering,

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the Beneficial offering, to have a closing prior to the expiration of the 90-day period?

A Yes.

Q What, if anything, did you say with respect to such a closing at this particular due diligence conference?

A Well, I indicated thatif the minimum was raised, as soon as the minimum was raised, there should be a closing held forthwith and subsequent closing would take place weekly, if possible, until the termination date of the offering.

Q Can you recall if there came a time during this due diligence conference when you told those people who were present that in addition for a closing to be held all moneys for the minimum had to be in a special account?

MR. DEVINE: Objection. Leading question.

THE COURT: Sustained.

Q What, if anything, did you say at the due diligence conference regarding the minimum amount of funds in the special account in connection with the closing?

A I said that before you can have a closing it would have to be $100,500 in the special account.

MR. BENOWITZ: No further questions.

THE COURT: Cross-examination.

MR. DEVINE: I have no questions of this witness.

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until Monday afternoon.

THE COURT: I have a lot of other work.

MR. EPSTEIN: And I believe with the short -- it was issued less than 48 hours before the resumption of the trial.

THE COURT: I suggest you get him here. You better get him here.

MR. EPSTEIN: I have been unable to contact him, your Honor.

THE COURT: What did the Court of Appeals do with this?

MR. EPSTEIN: The Court of Appeals denied the petition, your Honor. I already informed the Court before.

MR. BENOWITZ: Your Honor, the Commission is ready to proceed.

We now call Mr. Stanley Smith.

S T A N L E Y H. S M I T H, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENOWITZ:

Q Mr. Smith, would you be good enough to tell the Court where and how you are presently employed?

A I'm an associate professor of electrical engineering

at Stevens Institute of Technology.

Q And how long have you been so employed, Mr. Smith?

A I have been employed there almost nine years now.

Q Did there ever come a time, Mr. Smith, when you were employed in the securities industry?

A No.

Q Did there ever come a time, Mr. Smith, when you heard of two mutual funds by the names of the Vanguard Fund and the New York Hedge Fund?

A Yes.

Q And do you recall the first time that you heard of such funds?

A The first time I heard of Vanguard Fund was in the winter of 1971-1972.

I received a call from Mr. Kleinman saying that he and Robert Drucker had acquired Vanguard Fund or were in the process of acquiring Vanguard Fund and Mr. Kleinman asked me if I would be an independent director.

Q Do you recall what, if anything, you said to Mr. Kleinman in that telephone conversation?

A Mr. Kleinman asked -- told me that essentially most of the duties would be taken by Mr. Drucker and Mr. Kleinman and that, in effect, my being on the board of directors was more of a formality and a requirement of the

SEC.

Q And did you, in fact, become a director of the Vanguard Fund?

A Yes, I did become a director of the Vanguard Fund.

Then with regard to the New York Hedge Fund, I first heard about the New York Hedge Fund when it was called the Berkley Dean Fund at the time, in the summer of 1972.

Q Do you recall how you first heard of the Berkley Dean Fund?

A Yes. I was told -- I was told that Messrs. Drucker and Kleinman were in the process of acquiring the Berkley Dean Fund. They asked me if I would be an independent director of that fund.

I asked them if there would be any conflict being an independent director of two funds, and they said there would be no conflict and, therefore, I agreed to be an independent director.

The Berkley Dean Fund was subsequently changed to New York Hedge Fund in the fall of that year.

Q Do you recall who, if anybody else, was a director of the Vanguard Fund at or about the time you became a director?

A The directors of both funds at the time I

became a director with Robert Drucker, Julius Kleinman -- they were the affiliated directors -- and Dr. Dash and myself were the nonaffiliated directors.

Q And at the time you became a director of both the Vanguard and the New York Hedge Fund, who, if anybody, was the investment advisor to such funds?

A The investment advisor to such funds were Messrs. Drucker and Kleinman.

Q Were they investment advisors in the name of an entity?

A Well, they were with part of DW&B.

Q Mr. Smith, did there ever come a time when you heard of a company by the name of Beneficial Labs?

A Yes.

The first time I heard of Beneficial Laboratories was at the end of December in 1972. A meeting was called by Mr. Drucker. At the meeting, present at the meeting were the four directors, Messrs. Drucker and Kleinman and Dr. Dash and myself.

Q Four directors of what, sir?

A Of both funds. A meeting was called for the same time for both Vanguard and New York Hedge.

Q And do you recall what, if anything, was discussed at this meeting concerning Beneficial Labs ?

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A Yes.

At that meeting, which was the first meeting at which I heard of Beneficial Laboratories, well, we were -- Dr. Dash and I were surprised to hear that the funds had such a large position in Beneficial Laboratories.

Q Do you recall who told you that the funds had a large position?

A Yes. Mr. Drucker told us that the Funds had a large position.

He told us when we asked him what the position was at the time, he said, oh, Vanguard Fund had approximately 20 per cent of its assets in Beneficial, that Hedge Fund had about 60 some odd per cent of its assets.

He also mentioned the fact that the fund -- the shares in Beneficial had been purchased for the funds in the period between August and October of that year at approximately $7 or $8 a share, that as of the meeting that night in December the price was $24 a share.

Q Between August of 1972 and the meeting which you are now talking about, what, if any other meetings, did you attend concerning the Vanguard Fund and the New York Hedge Fund?

A The only other meetings we attended between -- in the fall of that year was, I think, in October.

Q Do you recall who was present at that meeting?

A The four directors were present; Messrs. Drucker, Kleinman, Dr. Dash and myself.

Q At that meeting, what, if anything, was discussed about Beneficial Labs?

A Nothing. Nothing at all. The first time I heard of Beneficial Laboratories was at the December meeting.

Q In that December meeting, Mr. Smith, what, if anything else, was discussed pertaining to Beneficial Labs?

A Well, Mr. Drucker told us that we had a very large position in the fund, as I mentioned before, and that that was more than we were allowed to have according to the policy of the funds.

We then proceeded to discuss the possibility of selling some of these shares at that point.

Mr. Drucker said that the president of Beneficial Laboratories had more than half the shares, the outstanding shares and that the float was very thin. If we decided to sell an appreciable block it would bring the price right down.

He said in view of this very think float instead of trying to sell it and bring the price down that we just revalue the price of the shares in our portfolio to by about 10 per cent, to reduce it by 10 per cent.

Q What, if any other meetings, did you attend pertaining to the Beneficial securities?

A The next time Beneficial was brought up was at the end of February.

A meeting was called by Mr. Drucker. Again, present at that meeting were Messrs. Drucker and Kleinman and Dr. Dash. I was present by telephone. I had a class that evening.

At that meeting I found that Commonwealth had underwritten Beneficial Laboratories --

Q How did you find that out, sir?

A Mr. Drucker told me.

Mr. Drucker told me that. He also told me -- he also mentioned that the president of Beneficial Laboratories was his brother-in-law. I also found out, again, from Mr.Drucker, that the SEC was investigating Beneficial Laboratories and the possibility of spinning off the stock was brought up again by Mr. Drucker.

Q Did there ever come a time when you attended another meeting concerning Beneficial securities?

A Yes.

The February meeting was at the end of February. About two days later we continued the meeting.

At that point --

Q Were the same parties present?

A The same parties were present, except I was present at that meeting in person.

Q Do you recall what was --

A Yes.

At that meeting we discussed the possibility of getting new management, among other things.

The reason we discussed the possibility of getting new management was that it had become obvious to us, the independent directors, Dr. Dash and myself, on Wednesday that both Messrs. Drucker and Kleinman were involved in the underwriting of Beneficial, that there were possible conflicts of interest, so we decided at that point to look for a new management.

Q What, if anything else, was discussed at that meeting?

A I heard from Mr. Conwill of Willkie, Farr & Gallagher that the SEC was investigating Beneficial Laboratories. He informed me that he represented both DK&B and the funds and, therefore, told us, the independent directors, to get our own attorneys, and this was brought up --

Q Just so the record is clear, when you are speaking

of the independent directors, are you speaking of yourself and Mr. Dash?

A Yes, yes.

Q Did there ever come a time when you attended another meeting concerning Beneficial securities?

A Yes. The following -- this meeting was on a Friday, March 2nd. The March 5th meeting was on the following Monday, and there we learned that the SEC had suspended trading in Beneficial Laboratories.

Q And what, if anything, did you discuss at that meeting concerning the valuation of the Beneficial securities in the funds' portfolios?

A At that meeting and at the previous meeting we had reevaluated the price of the stock in view of the fact that we had learned that the SEC was investigating Beneficial Laboratories.

On the following meeting, which was the meeting on March 5th, I think it was, we learned that the suspension the trading in Beneficial had been stopped -- there had been a suspension of trading by the SEC and, therefor, we had to reevaluate our position in the stock.

Q Did there ever come a time, Mr. Smith, when you learned that Commonwealth was a market maker in the Beneficial securities?

A I learned about that sometime in March for the first time.

Q March of what year, sir?

A March of 1973.

I think it was after this March 5th meeting that we just discussed.

MR. BENOWITZ: I have no further questions.

Thank you.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. DEVINE:

Q Mr. Smith, while you were a director of these two funds, what did you understand your responsibilities to be with respect to keeping apprised of the investments of those funds?

A Really, at no time during the time I was director of the funds was I informed by either Messrs. Drucker or Kleinman what the duties were.

I was a little concerned at the lack of meetings, the fact that the independent directors were not being informed as to what was going on.

I requested on several occasions in the spring, summer and fall of 1972 that more meetings be held and that the board of directors find out what was going on.

Apparently they were going through some acquisitions of new funds during that time and, you know, we really didn't know what was transpiring.

There were some other --

Q Did you ask to be informed of what the investments had been made on behalf of the funds?

A I asked not only during that time but also at meetings that we be kept informed as to what was going on in terms of the whole fund situation.

Q When you made this request to find out what securities had been purchased for the funds, were you informed as to what securities had been purchased?

A When we made the specific requests for -- well, for things like, the financial reports that were sent --

Q I am asking you with respect to purchases made by the funds now.

A Yes.

Q You were told?

A Yes.

Q When was it you said that you learned that Commonwealth was a marketmaker in Beneficial Labs securities?

A I heard about it for the first time sometime in March of 1973.

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Q March of 1973?

A Yes.

Q How as it that you learned this at that time?

A I believe I heard it through the attorney at the time, Mr. Curtis.

Q Mr. Curtis?

A Yes. He was the attorney for the independent directors at that time.

Q In the summer and fall of 1972, did you know that Mr. Drucker was associated with Commonwealth Chemical securities?

A Yes.

Q Did you know what their business was?

A Well --

Q Did you know that they were securities broker-dealers?

A Yes, I knew that, yes.

Q Did you know that it was the business of securities broker-dealers to make markets in various securities?

A Yes.

Q And in the summer and fall of 1972, were you aware of what the business of DK&B Management was?

A Yes. In fact, at that time they were managing the Vanguard Fund.

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Q And that was not a securities broker-dealer, is that correct?

A No.

Q And you were aware of that?

A Yes.

Q And it was not the business of DK&B Management to make any markets in any securities, was it?

A To my knowledge, no.

MR. DEVINE: That's all I have.

Thank you.

(Pause.)

MR. DEVINE: One other question. I'm sorry.

Q During the period that you were a director of these two funds, did the funds have counsel?

A Yes.

Q And did the two funds have the same set of attorneys?

In other words, did the same firm represent both funds?

A Yes.

Q What firm was that?

A I presume you are talking now about 1972 and early 1973?

Q Yes.

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A That was Willke, Farr & Gallagher.

MR. DEVINE: Thank you.

MR. EPSTEIN: We have no questions.

MR. ORMSTEN: If the Court please, at the conclusion of the last court session we offered into evidence a chart summarizing the quoted prices of the securities which emanated from the public offering of Beneficial units in March of 1972. At that time the Court instructed the plaintiff to have present the documents from which the quotations were taken. We have them. We have the maker of the chart present in court should anyone desire to examine him.

At this time I would exhibit, if the Court so pleases, to counsel, the summary charts and respectfully request that they be received into evidence. We have marked them as Plaintiff's Exhibit 11 and they are respectfully offered.

This covers a period from March of 1972 up until December of 1972 and they consist of the three different types of securities that were offered.

MR. DEVINE: Your Honor, it has been six weeks since we were here last and Mr. Ormsten just indicated that they had this document the last time they were here. This is the first time we have been shown it.

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soon as the papers are drawn they will be signed.

THE COURT: Let us submit the papers within 48 hours so we clean it up.

MR. ORMSTEN: They are in preparation, your Honor.

THE COURT: All right.

What does that leave now?

MR. ORMSTEN: Your Honor --

THE COURT: Does that leave one defendant or two defendants?

MR. ORMSTEN: No, your Honor. It leaves eight defendants. All right, we respectfully submit, are similarly situationed in respect to the offers of evidence. They are essentially associated with the underwriting defendant Commonwealth Chemical.

If the Court please, the Commission would call as its next witness Mr. Judkowitz with respect to the Commissions prayer for ancillary relief.

J E R O L D J U D K O W I T Z, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ORMSTEN:

Q Mr. Judkowitz, are you employed by the United States Securities and Exchange Commission?

A Yes, I am.

Q Mr. Judkowitz, were you assigned to an investigation involving the securities of Beneficial Laboratories, Inc.?

A Yes, I was.

Q Mr. Judkowitz, in connection with that assignment, did you make a calculation of the profits received by various of the defendants as a result of their transactions in the securities of Beneficial Labs?

A Yes, I did.

Q And, sir, did you make written notations of that calculation?

A Yes, I did.

Q Do you have those written notations with you in court?

A Yes, I do.

Q Are those the charts that are in front of you?

A Yes, they are.

Q Sir, what was the source of information which you used in compiling those charts?

A The trading charts and order tickets that are already in evidence and are in the court today.

Q I direct your attention, Mr. Judkowitz, to the document in front of you marked Plaintiff's Exhibit for identification No. 14. It consists of a series of

charts.

Will you tell the Court how many charts you have in front of you, Exhibit 14 only?

A Ten.

Q And you prepared those charts?

A Yes, I did.

Q And would you briefly state the defendants whose profits those charts reflect?

A Dorothy --

MR. DEVINE: Objection to the question to the extent that it contains a conclusion as to what the charts show.

MR. RUBENSTEIN: If your Honor please, I also object to it. All it can show is what the names are shown on there. There is no tie-in that my defendant made a profit.

THE COURT: I suggest you offer the charts in evidence and let me see what objections, if any, counsel have.

MR. ORMSTEN: I respectfully offer the charts in evidence, which consist of profits of the defendants, the trading accounts of Commonwealth and a total chart for Commonwealth trading account and the individual defendants reflecting profit, an alleged profit of

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approximately $640,000. They are Exhibits 14, 15 and 16.

THE COURT: I take it when you use the word profit, Mr. Ormsten, you mean profit according to the Commission's claim?

MR. ORMSTEN: Yes, sir.

(Pause.)

MR. DEVINE: Can I ask some questions on this, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DEVINE:

Q Mr. Judkowitz, is Plaintiff's Exhibit 15 for identification purportedly a summary?

A Yes, it is.

Q I show you Plaintiff's Exhibit 14 for identification.

Would you tell us, please, what each of those columns means?

A Yes.

The first column shows the date either -- each security was purchased, the second column was the number of shares with a letter after each one describing either warrants, common or units, the third column is the price and the fourth column is the gross amount.

Going across the page, you have the opposite side of the date sold, the number of shares, the price, the gross amount and the last column is the gross profit.

THE COURT: Are your columns labeled?

THE WITNESS: Yes, they are.

Q In preparing this Plaintiff's Exhibit 14 for identification, did you consult the monthly statements issued by various broker-dealers for this person, in this case Dorothy Drucker?

A I may have. I don't remember.

Q What broker-dealers did you consult with respect to transactions which Dorothy Drucker may or may not have had in the securities of Beneficial Labs?

A The only broker that I found she had an account with was Commonwealth Chemical Securities.

Q What checks did you make to see if she had accounts at other places?

A I had the order tickets that are in evidence, which were either subpoenaed or requested from all the brokers that had trading in the stock of Beneficial Labs.

MR. RUBENSTEIN: If your Honor please -- I am sorry. There is no question before the Court. I will wait for the next question.

Q How many broker-dealers did you request order

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tickets, trade tickets from?

A I don't remember the exact number.

Q Was it 100, less than 100?

A It was less than 100.

Q How many broker-dealers are there in the United States?

A I don't know.

Q Are there 2,000 or more?

A I really don't know.

Q And why was it that you only requested this information of 100 broker-dealers or less?

A Well, what I did was I started from the pink sheets and found each broker that made a market in the stock and from their tickets or confirmations or trading ledgers I could find out what other brokers they did have trades with and this is how I got all the brokers who did have trades in the stock.

Q Do you have a list of all those broker-dealers that you consulted in that way?

A Yes, I do.

Q Could I have the produced, please?

A It is not an actual list, it is from the chart of the pink sheets.

Q Just a minute now.

You consulted the pink sheets?

A Right.

Q And you found out the names of all of the broker-dealers who were listed in the pink sheets?

A That is correct.

Q During what period of time?

MR. ORMSTEN: Your Honor, I respectfully object.

If the profits shown or the figures shown are drawn from tickets, order tickets, confirmations and brokerage statements and do not include all brokers, then it may be that the Commission is showing less than the actual amount of profits that were made. But I respectfully --

MR. DEVINE: It may also be showing more, your Honor.

MR. ORMSTEN: I think that would be a showing as to the weight and the quality of the evidence here, but certainly not as to its admissibility.

In other words, if --

MR. DEVINE: It lacks weight and quality, it is not admissible. If the chart does not demonstrate what it is offered to show, then it cannot be admitted.

THE COURT: I don't see anything wrong with the chart.

Your questions seemed to be directed to

be directed to the foundation of this chart.

Counsel is entitled to know what brokers he inquired of. He can't cross examine without it.

MR. ORMSTEN: All right, your Honor.

THE COURT: You don't have a list of the brokers. How can he cross examine about the accuracy of this chart?

MR. ORMSTEN: Your Honor, the list of the brokers consulted the witness states is from the pink sheet. That list is in evidence, comprising one --

THE COURT: He just asked him does he have such a list and he said no.

MR. ORMSTEN: No, he said it is the pink sheet chart, which was submitted into evidence at the close of yesterday's hearing.

THE COURT: All right. That is your list.

Q What inquiry did you make of each of these broker-dealers? Did you issue a subpoena to each of them?

A Not in all cases. In some cases they either wanted a subpoena, they wanted a letter or she just sent them in via a telephone call.

Q During what period of time that you request that trade tickets be sent in for?

A March 10, 1972 through approximately -- I think it was February 1973.

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Q Febuary of 1973?

A Right.

Q Why was February of 1973 the termination date of that request?

A At that point is when I was starting to make all the charts up and finish my investigation.

Q So that any transactions that occurred from February of 1973 through May 1st of 1975 aren't reflected on your charts, is that correct?

A On these particular charts, that is correct.

Q So you have no idea whether any of these defendants had any transactions in Beneficial Labs securities after February of 1973, is that right?

A The only thing I can say is that the stock was suspended from a period after February 1973 for approximately-- I don't know, six,seven months.

Q Six or seven months out of more than two years there obviously was no trading?

A That is correct.

Q Could there have been private transactions during that period?

A There could have been.

Q Yes. So actually there could have been transactions for a period here of more than two years that aren't

shown by those charts, is that right?

A It is possible.

Q With respect to each of these broker-dealers that you made this request of for trade tickets and order tickets, did you also request that they send you chronologically the monthly statements for every account that you were inquiring about?

A No, I did not.

Q Why didn't you do that?

A Because I didn't think it was necessary at the time because the order tickets were the original document that a monthly statement would be made from.

Q But the monthly statement would show the chronology of the account, would it not?

In other words, it would show every transaction through the whole period. If all you have gotten is order tickets, order tickets may be lost. They are lost items. They do not show a whole chronology, do they?

A They should.

Q Not if they are lost? How could they?

THE COURT: It seems to me, Mr. Devine, you are eight miles beyond the voir dire.

MR. DEVINE: Your Honor, I am going to object to the chart as not showing what it purports to show.

Indeed, I have many other doubts about this.

It has been prepared, it appears to me, from random order gickets obtained from random selection from broker-dealers, it does not have a foundation in chronological monthly statements, which is the only kind of evidence which would show every transaction for a particular customer. Order tickets, you cannot, by looking at an order ticket, you cannot tell whether or not it is the last transaction, the next transaction, because you must have them all.

THE COURT: What about it? He says he has established that it doesn't have all the transactions and is, therefor, inaccurate.

MR. ORMSTEN: Your Honor, it --

THE COURT: Does it have all the transactions?

MR. ORMSTEN: Yes, it does, your Honor.

Your Honor, the fact that it is made from an order ticket and not an account statement indicates that it has greater accuracy and veracity than the converse, because the order ticket is the original beginning entry.

THE COURT: All I want to know is if it shows all the transactions in this stock.

MR. ORMSTEN: For the period which the chart purports to cover, yes.

THE COURT: Your objection is overruled.

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MR. RUBENSTEIN: May I on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. Judkowitz, you show profits in the name of Dorothy Drucker or a name Dorothy Drucker, is that correct?

A Yes, it is.

Q That is a name you found on the sheets or the order slips of which you made a compilation from, is that correct?

A That is correct.

Q You have no way of knowing whether that Dorothy Drucker who is the Dorothy Drucker who is the defendant herein, do you?

A Yes, I do.

Q How?

A The tickets did match up with monthly statements which I did not use to prepare these charts which had her home address on them.

Q But that would be someone else's statement. You don't know if she ever opened an account, do you?

A No, I don't.

Q And these records would not show whether she ever

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traded, except that there was a name Dorothy Drucker thereon?

A That is correct.

Q Someone else could have been trading in her name, is that correct?

A That is correct.

MR. RUBENSTEIN: No further questions.

MR. ORMSTEN: No further questions of this witness, your Honor.

I respectfully renew the offer.

I wish it admitted into evidence.

THE COURT: Do you have any objection?

MR. RUBENSTEIN: Yes, I do, as to Dorothy Drucker.

THE COURT: I heard what you brought out.

Overruled.

MR. RUBENSTEIN: It is not as to Dorothy Drucker. We don't know who it is. The only testimony in this court is that she never had any account any place.

THE COURT: I heard what you brought out, counsel. I overrule your objection.

It is absurd.

MR. DEVINE: Your Honor, may I have one or two questions on cross examination?

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THE COURT: Yes, sure.

CROSS EXAMINATION

BY MR. DEVINE:

Q Mr. Judkowitz, did you make any inquiry of the people whose accounts these charts are purported to reflect as to whether or not the charts were accurate and complete?

A I spoke to all the people, yes.

Q What did you ask them? Did you show them this chart and ask them if this was a complete set of transactions for their account in these securities?

A No, I did not show them the chart.

Q Did you show them any kind of a listing? Did you show them the order tickets?

A They would have been shown the order tickets, yes.

Q To whom did you show these order tickets? Did you show them to Robert Drucker?

A I really don't remember at this time, you know, who specifically order tickets were shown to at what point.

Q You made no uniform complete check with these individuals?

You did not submit these lists to them and ask them to verify or deny the accuracy and completeness of these transactions, did you?

A No, I did not.

Q Why wasn't that done?

A I really don't know.

Q If any of these individuals had a private transaction in a Beneficial Labs security not through a broker-dealer, do you have any reflection on these charts of such transactions?

A No, I don't.

Q Did you make any check with these individuals or with these entities to see if they had any such transactions?

A No, I did not.

Q Isn't it possible that these people could have had large losses in private transactions which would not be reflected on the records, the order tickets of any broker-dealer?

MR. ORMSTEN: Objection, your Honor.

THE COURT: Of course, anything is possible, sustained.

Q Did you make any check to see if there had been private transactions not --

THE COURT: That is repetitive. You asked that question five times.

MR. DEVINE: Withdrawn, your Honor.

I have no further questions.

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CROSS EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. Judkowitz, you did make inquiry of the account of Dorothy Drucker from Dorothy Drucker, did you not?

A We attempted to, yes.

Q And she told you she never traded, never had an account at any time, isn't that right?

A Not at the point when I spoke to her during the investigation.

Q Did you speak to her in your office prior to trial?

A Yes, I did.

Q And did she not tell you she had no such account?

A That is correct.

Q And you produced her in court here and so had her testify?

A That is correct.

CROSS EXAMINATION

BY MR. DEVINE:

Q Are the monthly statements which you say you may have consulted in preparation for these charts in court today?

A No, they are not.

Q Where are they?

A I don't know if I had all the monthly statements

in my office. I never took all the montly statements.

Q In other words, you don't have a complete set of the monthly statements that are behind these purported charts?

MR. ORMSTEN: I respectfully object. The witness specifically stated the monthly statements were not the basis, he said the original order tickets were. He said some monthly statements and the original order tickets.

MR. DEVINE: No further questions.

MR. ORMSTEN: No further questions.

(Plaintiff's Exhibits 14, 15 and 16 respectively received in evidence.)

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MR. ORMSTEN: The plaintiff Commission rests, your Honor.

MR. DEVINE: At this time, the defendants represented by my firm would like to reserve our rights to make motions --

THE COURT: No, make your motions now.

MR. DEVINE: The motion is --

THE COURT: This thing has been dragging on too long as it is. Make your motions now.

MR. DEVINE: The motion is to dismiss for failure to make a prima facie case.

THE COURT: Denied.

MR. DEVINE: Your Honor, the defendants, particularly Mary Sharpe, Zoltan Guttman and Robert Drucker are in court today. They will be witnesses in the defendants' case.

However, Mr. Butowsky is in Los Angeles this morning at a board of directors meeting. This was unavoidable.

The defendants represented and are in court this morning represented by my firm, wish to have Mr. Butowsky in court during the presentation of their defense.

THE COURT: No, we can't wait for Mr. Butowsky and close our doors until it suits the defendants' convenience.

This hearing was scheduled for yesterday for at least six weeks.

MR. DEVINE: Yes, your Honor.

THE COURT: To continue until we complete it.

If your clients don't choose to be here, that is their --

MR. DEVINE: My clients are here, your Honor, and Mr. Butowsky --

THE COURT: Let's proceed. I don't want any more of this. Proceed.

MR. RUBENSTEIN: If your Honor please, may I make

back here.

MR. ORMSTEN: Surely.

THE COURT: We will take him out of order or whatever else if there is any end to this weary case.

MR. DEVINE: Your Honor, the defense calls Mary Sharpe.

M A R Y S H A R P E, a defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Miss Sharpe, what is your age?

A I'm 32.

Q You will have to try to keep your voice up here. It is difficult to hear.

Are you employed at the present time?

A Yes, I am.

Q By whom are you employed?

A Rand & Co., Inc.

Q When did you begin that employment?

A February 3rd of this year.

Q What position do you hold?

A Administrative assistant.

Q And what is your salary in that position?

A $250 a week.

Q Were you ever employed by Commonwealth Chemical Securities?

A Yes, I was.

Q When did that employment begin?

A August of 1970.

Q When did that employment end?

A In June of 1974.

Q During the period of your employment by Commonwealth Chemical Securities, what position or positions did you hold?

A I was a bookkeeper for Commonwealth.

Q Were you a bookkeeper throughout the period of your employment or did your position change at all?

A No, it did not change.

Q Briefly, what were your duties as a bookkeeper at Commonwealth Chemical Securities?

A I posted the general ledger from the computer sheets that we received daily, balanced our general ledger to the computer sheets, the daily input; I made out the payroll checks each week, paid the bills.

Q Was it ever your function to deal with customers in purchasing or selling securities?

A No, it was not.

Q Was it ever your function to deal with other

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securities firms in the purchasing or selling of securities for the account of Commonwealth Chemical?

A No, it was not.

Q Have you ever been a securities registered representative?

A No.

Q Do you currently have any business association with Commonwealth Chemical Securities?

A No.

Q Or with Robert Drucker?

A No.

Q Or with Julius Kleinman?

A No, I do not.

Q Or with DK&B Management?

A No.

Q Did there ever come a time when an account was opened in your mother's name at Commonwealth Chemical Securities?

A Yes, there was.

Q What is your mother's name?

A Nellie Pyles.

THE COURT: Nellie what?

THE WITNESS: Pyles, P-y-l-e-s.

Q When was that account opened, to the best of

your recollection?

A I believe it was in March, February or March of 1972.

Q Please tell the Court what you can recall about the circumstances under which that account was opened?

A I understood at that time that Commonwealth had an offering of Beneficial Labs stock and I thought at that time it would be a good opportunity for me to do something nice for my mother and I wanted to buy stock for her and if there was a profit in the account I could give it to her, if there was not, then it would be my risk and not hers.

Q Did you cause the account to be opened in your mother's name?

A Yes, I did.

Q When the offering of Beneficial Labs unit came about, were units purchased in your mother's account at Commonwealth?

A Yes.

Q How many units were purchased, do you recall?

A 1,000 units.

Q Did you cause that purchase to be made?

A Yes, I did.

Q Would you tell the Court if there were any additional circumstances with respect to that purchase

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being made in your mother's account other than what you have told us with respect to the opening of the account?

A Any additional?

Q Yes.

Was this part of the same situation that you have already described?

A Yes.

Q Did there come a time when payment --

MR. BENOWITZ: Objection, your Honor. I don't understand what situation Mr. Devine is referring to.

THE COURT: I am afraid your question isn't very clear, Mr. Devine.

Q You have described for the Court the circumstances under which your mother's account was opened.

MR. BENOWITZ: Objection, your Honor. I don't believe she described any circumstances under which the account was opened, she merely said that she caused the account to be opened.

THE COURT: I heard what she said. I understand English.

She said she wanted to do something nice for her mother so she bought some stock in her name, if there was any risk it would be hers and if there was any profit it would be her mother's.

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Isn't that what she said?

Q Did there come a time when payment was made for the units which were purchased in your mother's account in Beneficial Labs' offering?

A Yes.

Q When did that payment come about, do you recall?

A I don't recall the exact date.

Q Did you casue that payment to be made?

A Yes, I did.

Q Were they your funds that were used?

A Yes, they were.

Q Prior to making the purchase of Beneficial Labs units in your mother's account at Commonwealth, did you discuss this prospective purchase with counsel?

A Yes, I did.

Q With whom did you discuss this?

A I discussed my desire to buy the stock for my mother with Manny Brown, who was an attorney.

Q Do you recall when that discussion took place?

A When I heard of the offering of the stock. I don't remember the exact date.

Q Was anyone else present during that discussion, to the best of your recollection?

A I don't believe so.

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Q Will you tell the Court, please, what was said in that conversation and who said it?

MR. BENOWITZ: Your Honor, I object to this line of questioning, unless Mr. Devine intends to produce Mr. Brown.

THE COURT: Sustained.

MR. DEVINE: Your Honor, it is the intention of the defense to produce Mr. Brown. He is presently under subpoena and if he does not comply with it, we will ask your Honor to give us appropriate direction to require him to do so.

Also, this is the same objection that was made during the examination of Mr. Goodman and we offer this statement not for the truth of what Mr. Brown said, but for the fact --

THE COURT: I will take it of the fact it being said.

Q Please tell us what you said to Mr. Brown and what Mr. Brown said to you in that conversation?

A I told Mr. Brown at that time my desire to purchase the stock in my mother's name for my mother and I asked him if he thought there was any problem with doing that.

THE COURT: What?

THE WITNESS: Any problem with my doing that.

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I not being familiar with the securities laws, I asked him if he felt it was all right to do.

Mr. Brown told me at that time that he didn't think there should be any problem in doing --

MR. BENOWITZ: I can't hear.

THE COURT: Mr. Brown told her he didn't think there would be any problem.

Q Did there come a time when a portion of the Beneficial units which had been purchased in the offering in your mother's account were sold?

A Yes.

Q Do you recall approximately when that occurred?

A It was a few days after the opening in the stock.

Q How many units were sold at that time?

A 500 shares -- units.

Q Did you cause that sale to be made?

A Yes, I did.

Q Why was it that the sale was made at that time?

A There was a small profit in the account and I wanted to sell the units then for the profit that I could give to my mother.

Q How much of a profit was it, do you recall?

A It was roughly $200.

Q After that sale had been made in your mother's

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account, was a check issued in payment of the proceeds of the sale?

A Yes, there was.

Q Did you receive that check?

A Yes, I did.

Q And did you deposit that check?

A Yes, I did.

Q Did you endorse your mother's name on it?

A Yes, I did.

Q After you had made that endorsement and that deposit, did you transmit the proceeds or the profits of that sale to your mother?

A No, I did not.

Q Why was it that you did not do that?

A There had been a disagreement between my mother and I subsequent to my buying and selling the stock and I did not feel it would be agreeable to her at that time for me to give her a gift.

Q So the $200 profit that you made on this transaction you kept, is that correct?

A Yes.

MR. DEVINE: No further questions, your Honor.

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CROSS EXAMINATION

BY MR. BENOWITZ:

Q Miss Sharpe, you stated that you were not a registered representative of Commonwealth.

Does that mean you didn't have the authority to open up accounts and place orders on behalf of accounts?

A As a registered rep I guess --

Q Could you answer my question? Did you have the authority to open up accounts and place orders on behalf of different accounts?

A No, I did not, no.

Q Did you ever open up an account or place orders on behalf of an account?

A I opened an account in my mother's name.

Q How did you do that?

A By asking the principals of the firm if I, you know, could buy shares.

Q Exactly who did you speak to?

A I spoke with Mr. Brown at that time --

Q Was he a principal of Commonwealth at that time?

A I believe he was.

Q Who else did you speak to?

A Mr. Drucker.

Q And who else?

A That's all I recall speaking to.

Q And do you recall if you spoke to Mr. Drucker prior to the time you spoke to Mr. Brown?

A No, I don't.

Q Do you recall if you spoke to them at the same time?

A No, I don't.

Q You have no recollection of the order in which you spoke to either Mr. Drucker or Mr. Brown?

A Not in the order, no.

Q Do you recall what you told Mr. Drucker in your conversation with him?

A That it was my desire to purchase the Beneficial stock for my mother.

Q Did you tell him that you wanted to open up an account in your mother's name?

A Yes.

Q And what did Mr. Drucker say to you?

A That there shouldn't be any problem, that I should perhaps let my mother know of my intentions.

Q What else did you tell him about this particular account? Did you tell Mr. Drucker at the time of this particular conversation that you were going to use your own monies to purchase securities in this account in your

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mother's name?

A Did I tell him I was going to use my own money?

Q That's correct, yes.

A Yes.

Q What did Mr. Drucker say when you told him that?

A I don't recall him saying anything to that as long as I was sure what I was doing and what I wanted to do.

Q Miss Sharpe, is it you don't recall Mr. Drucker saying anything or you just can't recall anything about that particular aspect of the conversation?

A I don't recall anything about that aspect of the conversation.

Q So it is possible that Mr. Drucker may have said something --

THE COURT: Sustained.

MR. DEVINE: Objection.

Q Did you ever have a discussion with Mr. Drucker concerning the account that you had opened for your mother concerning which securities should be bought or sold in that account?

A In my mother's account?

Q Yes.

A No, no.

Q Who made the investment decisions for that account?

A I did.

Q And how did you go about making such investment decisions? Did you consult anybody?

A Not really, no. Only Mr. Brown before I purchased.

Q We are talking about investment decisions.

Did you also consult Mr. Brown with respect to investment decisions?

A No. I don't understand what you mean.

Q You testified that you were not a registered rep at Commonwealth.

A Yes.

Q How did you decide what securities to buy or sell for that account that you opened for your mother?

A This was an issue that my firm was doing and I felt, you know, that, you know, it was something that I knew about, I had heard about it from working at Commonwealth.

Q You are talking about Beneficial securities?

A Yes. That is how I knew of the stock.

Q Let us go back to your conversation with Mr. Drucker whereupon you told him you wanted to open this account.

Do you recall exactly how the account was opened, the mechanics? Can you tell the Court that?

Perhaps I can help you.

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Was there a new account card filled out for this account?

THE COURT: That is the idea of cross examination? You can even put leading questions if you want to.

MR. BENOWITZ: Thank you, your Honor.

A The mechanics --

Q Was a new account card filled out for this account?

THE COURT: This isn't an examination before trial, it is supposed to be cross examination.

A I believe an account card was filled out with name and address.

Q Who filled it out?

A I don't recall.

Q You can't remember if you [illegible]t out?

A I -- I probably did. I do[illegible]ber.

Q You testified that you caused a purchase of 1,000 Beneficial units to be made on behalf of the account of Nellie Pyles.

Do you recall how you caused that 1,000 units to be purchased? Did you go into the trading room of Commonwealth and speak to somebody and say, "I want to purchase 1,000 units of Beneficial for my mother's account?

A I asked Bob Drucker if I could purchase 1,000

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units of Beneficial for my mother.

Q And was this during the Beneficial offering, the public offering?

A Yes, it was.

Q Where did you speak to Mr. Drucker?

A I don't remember the exact date. Sometime after I heard that they were --

Q No. The question was, ma'am, where did you speak with Mr. Drucker? Was it on the premises of Commonwealth?

A It was in the office of Commonwealth.

Q Was it on the trading room of Commonwealth?

A It could have been.

Q And do you recall the conversation that you had with Mr. Drucker pertaining to the purchase of 1,000 units on behalf of your mother's account?

A I told Mr. Drucker I wanted to purchase 1,000 shares of stock or units for my mother in Beneficial.

Q What did he say?

A That I should be able to do that if it was -- that I should be able to purchase the stock.

Q What, if anything else, did he say?

A I don't recall anything else.

Q Is it that you don't recall now that he said

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anything --

THE COURT: Please, will you please put leading questions so we can move this case to an end?

I have hinted at it about as clearly as I could for about four years.

Q Did Mr. Drucker ask you whether you consulted with your mother to make this purchase?

THE COURT: Sustained.

Put a leading question.

Q Did you speak to your mother before --

THE COURT: Sustained.

Put a leading question.

MR. BENOWITZ: I thought that was a leading question, your Honor.

THE COURT: It is not.

Why don't you consult some of your colleagues. They might know what a leading question is.

MR. BENOWITZ: Yes, sir.

THE COURT: That's all they ask on direct examination, when they are not allowed to do it.

Q You didn't speak to Nellie Pyles before making this purchase of 1,000 units, is that correct?

A That is correct.

Q Did you tell Mr. Drucker that?

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A I didn't tell him that I hadn't spoken to her when I asked -- well, he knew I hadn't spoken to her when I asked him to purchase the units.

Q Excuse me. He said he knew he hadn't spoken to your mother?

THE COURT: That's what she said.

Next question.

Q What kind of disagreement did you have with your mother that made you change your mind not to give her the gift of 1,000 units of Beneficial Labs or the proceeds from the sale of those units?

Do you understand the question, Miss Sharpe?

A Yes, I understand the question.

I don't recall the total circumstances of what had happened at that time.

We had various disagreements.

Q Where does your mother live?

A She lives in Virginia.

Q And where was she living at or about the time that you made these purchases and opened up this account on her behalf at Commonwealth?

A Charlottesville, Virginia.

Q Where were you living at that time?

A In New York.

Q How many times did you go down to Charlottsville or did you speak to her during this period of time?

A I don't know how often. I got down every three months or so, usually at holidays.

Q How many times did you speak to her? Did you speak to her once a week, once a month, once a year?

A It depends. Every couple of weeks or more often, depending on what there is to discuss.

Q Would you tell me what disagreement you had with your mother during this period of time that made you change your mind not to give her the Beneficial units and/or the proceeds of the sale of those units?

MR. DEVINE: Objection. Asked and answered.

THE COURT: Sustained.

MR. BENOWITZ: Your Honor, I don't believe it was answered.

THE COURT: She said she didn't recall.

MR. BENOWITZ: She said she didn't recall all of the circumstances. I would like to know what circumstances the witness does recall.

A At that particular time, I don't remember what the disagreement was. As I said, we have had several and --

Q Thank you, Miss Sharpe.

Miss Sharpe, did you maintain any checking accounts

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during the period of time that you were employed at Commonwealth Chemical Securities?

A Checking accounts for my own account?

Q Yes, ma'am.

A Yes, I did.

Q And will you tell the Court where you maintained those accounts?

A I have a checking account at Chase Manhattan Bank.

Q Was that on John Street near the offices of Commonwealth Chemical?

A Yes, it is.

Q Miss Sharpe, I would like to show you a check marked as Plaintiff's Exhibit 20 for identification.

(Handing.)

Have you ever seen that check before?

A Yes, I have.

Q Does your signature appear anywhere on that check?

A I have signed the front of the check.

Q And does your handwriting appear anywhere else on that check, front or back?

A I made the check out.

Q When you say you made the check out, what do you mean?

A I made the check out to the order of Nellie Pyles,

the date and the amount of the money.

Q Would you look at the back of that check and tell me if your handwriting appears anywhere on that side of the check?

Miss Sharpe, did you sign your mother's name on the back of that check and deposit it into your bank account at the Chase Manhattan Bank?

A Yes, I did.

Q Thank you.

MR. BENOWITZ: No further questions.

I offer Plaintiff's Exhibit 20 in evidence.

MR. DEVINE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 20 received in evidence.)

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MR. RUBENSTEIN: I have a few questions, if I may, your Honor.

CROSS EXAMINATION

BY MR. RUBENSTEIN:

Q Miss Sharpe, the account of Nellie Pyles, when you say you paid for it, did you pay for it by your check?

A I paid for it with my money, yes.

Q Did you pay for it with your check?

A I don't believe it was paid by check, no.

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Q How was it paid?

A I believe it was a money order or a cashier's check.

Q And where did you obtain that money order or a cashier's check from?

A I took cash to the bank and obtained a money order or cashier's check from the bank.

Q How much was that money order or cashier's check?

A For the amount of the --

Q Well, what was that amount, Miss Sharpe?

A The amount of the cash I paid for the purchase of my mother's stock?

Q Yes, of the stock, whether it is your mother's or not.

A It was $2,250.

Q And where did you have this cash? Where did you get this cash from to buy this money order from?

A It is money that I have saved.

Q Where was it? In a safe deposit box, under the mattress? Where was it, Miss Sharpe?

A I had it at home.

Q Where? Please tell me.

MR. DEVINE: Objection, your Honor, to where she kept the money. I don't see the relevance of this whole

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line.

THE COURT: Overruled.

Q Where, Miss Sharpe?

A I had the money at home.

Q At home?

A In my apartment.

Q In cash?

A Yes.

Q Then when the stock was sold, was the total amount -- you said 500 units were sold.

A Only 500 were sold.

Q And you still maintained 500?

A Yes, I did.

Q Did you then deposit that money in your checking account?

A The money for the sale of the 500 shares?

Q Yes.

A Yes, I did.

Q And did you remove that from your checking account subsequently?

A Well, I'm sure there has been a flow of money.

Q In other words, did you take it out by check for cash or anything like that?

A Out of my account?

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Q Yes.

A Only for cash that I need.

Q In August of 1973, were you in the Bahamas, Miss Sharpe?

MR. DEVINE: Objection, your Honor. I don't know what the relevance of this is.

THE COURT: I don't see any relevance in going to the Bahamas.

MR. RUBENSTEIN: If your Honor please, I think it is relevant, because I think part of the testimony here is an offer by Ofinco --

THE COURT: Would you mind facing me, sir, when you are making a statement.

MR. RUBENSTEIN: I apologize.

THE COURT: I can't hear you.

MR. RUBENSTEIN: Part of the evidence here was an offer by a company known as Ofinco and we had raised a question whether there was any relationship with any of the defendants. Ofinco was a company in the Bahamas.

I am now asking this defendant whether she was in the Bahamas on or about that time.

THE COURT: All right.

You can answer it.

A No, I was not.

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Q Miss Sharpe, when you were employed at Commonwealth -- you know Dorothy Drucker?

A Yes.

Q That is Robert Drucker's wife?

A Yes.

Q Was she employed there?

A No, she was not.

Q You say your association with Commonwealth -- you were an employee, is that correct?

A That is correct.

Q Your association with Commonwealth terminated June of 1974. I believe that was your testimony.

A That is correct.

Q Have you seen Robert Drucker since that date?

A Yes, I have.

Q You have seen him at your apartment?

A No, I have not.

Q I will ask you specifically, Miss Sharpe, was Mr. Drucker in your apartment on August 9, 1974?

MR. DEVINE: Objection to the relevance of this question, of this whole line of examination.

THE COURT: How is this relevant?

MR. RUBENSTEIN: If your Honor please, I represent a defendant who is charged with a conspiracy

or charged with being part of a plan or a plot.

I want to show that we were not in any way engaged and I will show that the defendants or I want to show that other defendants were more closely engaged in this than we were. I think it bears on the question --

THE COURT: So what if others were more closely engaged.

MR. RUBENSTEIN: Or were engaged in it other than us.

THE COURT: I don't see how that shows that you were not.

I will sustain the objection.

MR. RUBENSTEIN: May I ask then the next question:

Q Was Mr. Drucker at your apartment on February 9, 1975?

MR. DEVINE: Same objection, your Honor.

THE COURT: Sustained.

MR. RUBENSTEIN: I have no further questions.

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Just one question.

In cross examination by plaintiff's counsel there was reference to investment decisions with respect to your mother's account.

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Were any stocks or securities of any kind purchased in your mother's account other than the Beneficial Labs transaction you have testified about?

A No, there was not.

MR. DEVINE: No further questions, your Honor.

THE COURT: Any recross?

MR. BENOWITZ: No, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. DEVINE: Your Honor, I believe Mr. Judkowitz is back. Could I have him on the stand briefly?

J E R O L D J U D K O W I T Z, resumed the stand and testified further as follows:

THE CLERK: I remind you you are still under oath, Mr. Judkowitz.

RECROSS EXAMINATION

BY MR. DEVINE (Continued):

Q Mr. Judkowitz, I am showing you Plaintiff's Exhibits 14, 15 and 16.

(Handing.)

Do these charts contain every transaction, both purchase and sale, by each of the people or entities referred to on these charts?

A I believe they do.

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Q And have you shown all of the losses sustained by these accounts as well as all of the profits sustained by these accounts?

A Yes, I have.

Q And how have you matched purchases and sales for the purpose of establishing profits or losses?

A I used the FIFO method of accounting, which is the first in, first out, that is, the stock that was purchased first I used that price as the stock that was sold first to get the gross profit.

Q And are you an accountant?

A Yes, I am.

Q You are a certified public accountant?

A No, I'm not.

Q Where on the chart are the losses indicated? Is there a separate column for those losses?

MR. BENOWITZ: Your Honor, Mr. Judkowitz identified the chart this morning and I believe the chart will speak for itself.

THE COURT: Sustained.

MR. DEVINE: No further questions, your Honor.

MR. RUBENSTEIN: No questions.

MR. ORMSTEN: No questions.

(Witness excused.)

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MR. DEVINE: Your Honor, may we have a one minute recess in which I can talk to my clients?

THE COURT: Yes.

(Recess.)

MR. DEVINE: The defendants call Manny Brown. I believe he may be outside.

E M A N U E L B R O W N, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Brown, are you an attorney?

A Yes, I am, sir.

Q Are you admitted in New York State?

A I am, sir.

MR. DEVINE: Your Honor, I have a stipulation with respect to Mr. Brown's testimony which the plaintiff has executed and which the attorneys for the Beneficial defendants have executed.

Rather than ask Mr. Brown these questions, I would ask that this document be accepted. He is here to be cross examined with respect to it and would save us some time.

MR. RUBENSTEIN: May I look at it? I have

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never seen it.

MR. ORMSTEN: We respectfully decline to enter into the stipulation.

This stipulation which was in respect of the defendant John Feldman was furnished to us well in advance of the appearance --

THE COURT: You don't stipulate?

MR. ORMSTEN: No, sir.

THE COURT: You don't need to apologize for it. You don't have to stipulate.

MR. DEVINE: I would like to have this stipulation marked as Defendants' Exhibit B.

THE COURT: Whose stipulation is it?

MR. DEVINE: Proposed stipulation, sir. I am just tryint to describe it.

(Defendants' Exhibit B marked for identification.)

Q Mr. Brown, I show you Defendants' Exhibit B for identification.

(Handing.)

I ask that you read it and tell us whether the statements contained in that document are true, to the best of your knowledge.

(Handing.)

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THE COURT: Sustained.

We proceed here by question and answer or by stipulation.

Q Mr. Brown, from approximately 1969 until approximately October 1971, were you a principal of Commonwealth Chemical Securities?

A I was, sir.

THE COURT: Now, no more leading.

Q Was there a period of time in which you were counsel for -- strike that. Withdrawn.

In connection with your representation of Commonwealth Chemical Securiites, did you represent them with respect to the offering of Beneficial Labs units?

MR. BENOWITZ: Objection, your Honor. It is a leading question.

THE COURT: Sustained.

Q Did there come a time when you attended a closing with respect to the Beneficial Labs units?

A I did, sir.

Q When was that?

A In early 1972.

Q Do you recall the date?

A Not the exact date. It was sometime in March, I believe.

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Q Would it have been March 10th?

A It is possible.

Q And whom did you represent at that closing?

A Commonwealth Chemical.

Q Please tell the Court what occurred at the closing?

A There was a representative of the registrar and transfer agent, there was, I believe, two attorneys representing Beneficial Labs, there was an exchange of documents, exchange of stock, exchange of checks -- not exchange of checks, giving of checks for the exchange of stocks. That was the end of it.

Q At the time of the closing, was it your opinion that all of the preconditions to the closing had been satisfied?

A It was, sir.

MR. BENOWITZ: Objection, your Honor. There is no foundation for that question. We don't know what the preconditions were and Mr. Devine has not established it.

THE COURT: Sustained.

MR. DEVINE: Their own circular contains the preconditions. They offered it and it has been received in evidence.

THE COURT: Sustained.

Q At the time of the closing with respect to the

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Beneficial unit offering, had you read the offering circular?

A I did.

MR. BENOWITZ: Objection. That is a leading question, also.

THE COURT: Overruled.

Q Were you familiar with the contents of that document at the time of the closing?

A I was, sir.

Q And did you feel that the conditions contained in that document with respect to the closing had been satisfied at the time of closing?

MR. BENOWITZ: I object, your Honor. If Mr. Devine wants a document --

THE COURT: Sustained. Sustained.

MR. DEVINE: Could I have the document, please?

(Pause.)

Q I show you Plaintiff's Exhibit 3 in evidence, and I ask that you read on the first page --

MR. BENOWITZ: Objection, your Honor. The document speaks for itself. Mr. Devine has made this objection previously.

THE COURT: Sustained.

MR. DEVINE: Your Honor, I think I am entitled to

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ask this witness whether or not in his opinion the closing which occurred on March 10th was appropriate in view of the terms and conditions of the offering, and I make this as an offer of proof at this time.

THE COURT: You haven't laid the foundation for the witness to express an opinion about anything, not even the weather.

MR. DEVINE: I believe that the witness' representation of one of the parties to the closing, which is established, plus his familiarity with the exhibit which is in evidence --

THE COURT: That doesn't make him an expert.

MR. DEVINE: I am asking this question as an expert.

THE COURT: Then only experts can express opinions. Come on.

Q At the closing of the Beneficial Labs units offering which you have testified you attended, did you express an opinion with respect to whether or not it was appropriate for Commonwealth Chemical, your client, to engage in that closing at that time?

A Yes. I thought it was appropriate to engage in the closing.

Q Thank you.

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Do you know Mary Sharpe?

A I do.

Q Prior to the closing of the Beneficial Labs offering, did you have a discussion with her concerning a prospective purchase in that offering?

A I don't recall having a discussion with her about buying stock of Beneficial Labs. I had discussions with her about, you know, purchasing of stocks and accounts and things like that, but not specifically for Beneficial Labs.

Q Did you have a discussion with her with respect to purchasing stock in an account for her mother's benefit?

A She asked me whether she could purchas e-- she asked me whether she could purchase as a gift stock for her mother. She didn't mention which stock at the time.

I said, "Any time you want to purchase as a gift as long as --" she wanted to open an account.

I said, "As long as you have your mother's consent--"

MR. BENOWITZ: Your Honor, I object to this. We haven't had a place of conversation, who else was present or date of conversation.

THE COURT: Sustained.

Q Do you recall when this conversation took place?

A No, sir.

Q Do you know Lou Goodman?

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A Yes, I do.

Q Prior to the closing of the Beneficial Labs offering, did you have a discussion with him with respect to a prospective purchase of Beneficial Labs unts?

MR. BENOWITZ: I object, your Honor. That is a leading question.

THE COURT: Sustained.

Q Prior to the closing of the Beneficial Labs offering, did you have discussions with Mr. Goodman?

A Well, yes.

Let me just explain that.

Q Give us the time and place and people present?

A Well, I don't know the time. The place would be in Commonwealth Chemical's office, but I don't recall the time.

THECOURT: Was it related to the offering? Before or after the offering?

TH WITNESS: It was during the offering.

THE COURT: All right.

THE WITNESS: During the offering we had a conversation where I had checked it -- there was a question whether --

THE COURT: A conversation with who?

THE WITNESS: With Lou Goodman, as well as

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other people in the office.

THE COURT: Who?

THE WITNESS: The representatives, the salesmen in the office, and there was a question there of whether relatives could purchase -- relatives or anyone else could purchase issues of Beneficial -- stock of Beneficial Labs.

I had checked the NASD manual on the free riding. I read it -- in fact, I think we all read it together, I'm not certain, it's a long time, you know, and my opinion was that, you know, according to the NASD manual if this was not a "hot issue," then there is no restriction on relatives or what have you buying theissue, because apparently they had plenty of stock to give to everyone.

They were having trouble, you know -- there was no question that it wasn't a hot issue.

So on the basis of what was said in the NASD manual under the free riding section, it seemed to be, in my opinion, no restriction as far as relatives, as long as they were bona fide purchases, you know, that a bona fide purchaser could purchase Beneficial Labs.

Again, as I said, that was from the reading of the NASD manual.

Q Did there come a time when you had a conversation with a gentleman by the name of Thomas D'Allesandro?

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A Well, I testified once before to this before the --

MR. BENOWITZ: Your Honor, I respectfully submit that the witness is not being responsive to counsel's question.

A I was part of a conversation.

I didn't initiate the conversation.

Q Who were the parties to the conversation?

A Which conversation are you talking about anyway?

Q Did you have a conversation that concerned the purchasing of Beneficial Labs securities by either Vanguard Fund or New York Hedge Fund?

A Yes.

If I may give you some background on this, after Beneficial had closed, and I don't know the time schedule or the time date or anything like that, I heard in the office when I was -- you know, sometimes I walked around and I heard a conversation and what have you and there was a conversation that said -- I don't know if it was Bob Drucker or someone said that he was told that Beneficial -- that the funds could buy Beneficial Labs.

I felt that this was not right.

Now, I didn't have any law on it, I didn't know, I was not an expert in SEC, I had nothing to do with the funds, this was an area I had absolutely nothing to do with,

but it just seemed to me that it was not correct where one party, you know, brought out the issue and the same parties that, you know, that are involved with the funds to buy the stock. It didn't sit right with me and I expressed my opinion.

I said, "Look, it's not my business, I'm not connected with the funds or anything else, but in my opinion it just did not seem the right thing to do," and I expressed that to Bob Drucker.

Bob Drucker then told me, well, he says, "I was told this by the funds' counsel."

So I said, "I don't think you got the conversation accurate, because I don't think he would tell you anything like that."

Then he suggested that he initiate a phone call to Mr. D"Allesandro and I listened in and if I had any comments --

Q Who was Mr. D'Allesandro?

A He was the attorney with the funds.

Q With what firm was he associated?

A Farr, Gallagher.

Q Willkie, Farr & Gallagher?

A Willkie, Farr & Gallagher.

Q Tell us the conversation.

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A Bob called him, I was listening in and I commented, I said I was listening in, you know.

Bob asked him the question whether the Funds could purchase the stock.

Tom said yes, if the thing was closed. He made some stipulation, you know, some comments, but that it was closed or something, I don't recall the exact words, but he said, yes, the funds -- the funds had the right to buy it.

Then the question was asked at the same time, which is even more amazing, he said -- I don't know if the question was asked or he suggested it, whether he volunteered it, was that if the funds bought the stock directly from Commonwealth as a marketmaker, Commonwealth better be damn sure that they can justify the price, that it was the lowest price and everything else.

Now, again, you know, this happened a long, long time ago. I don't remember the exact words. I am 99 per cent sure that this is the gist of it, you know, of what happened that day, and I believe that was the conversation.

I said, "Look,if that is what it is, that is what it is, " and I still -- since I had absolutely nothing to do with the funds I just didn't want any -- you know, that was it.

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But that's my best recollection, again, being so far away, and the reason it stood out in my mind because most other things don't, is the fact that I just felt uncomfortable with this comment.

Q Did Mr. D'Allesandro say that if the price was the true best market price, that Commonwealth Chemical Securities could sell Beneficial Labs stock to the -- Vanguard Fund and New York Hedge Fund?

MR. BENOWITZ: Your Honor, I object. I have been --

THE COURT: Sustained.

MR. DEVINE: No further questions, your Honor.

CROSS EXAMINATION

BY MR. BENOWITZ:

Q Mr. Brown, I show you again Plaintiff's Exhibit 3.

(Handing.)

Before you went to the closing, did you ever read Plaintiff's Exhibit 3 from cover to cover?

A I did.

Q And is it your testimony now that when you told your clients that the terms of the closing -- did you tell your clients that the terms of the closing had been complied with as set forth in Plaintiff's Exhibit 3?

A No.

MR. DEVINE: Your Honor, these are questions that he objected to when I asked them and then he turns around and asks him the same questions.

THE COURT: I was present, I think, during your examination.

If you have some objection, what is it?

MR. DEVINE: Objection, your Honor.

THE COURT: On what ground?

MR. DEVINE: On the same grounds that the SEC employed when I was asking about this document, that it spoke for itself, I believe was the objection, and it was sustained.

THECOURT: Overruled.

MR. BENOWITZ: Could you repeat his answer.

(Record read.)

Q But it is your testimony today that all the terms were complied with or were not complied with?

A No, that is not what you asked me.

You asked me whether I told them that all the terms were complied with.

Q Right.

A And I said no. I believe that was the question.

Q That's the question. You said no.

Now my question is, didyou know whether all the

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terms were complied with?

A Well, I thought all the terms were complied with, yes.

Q You thought.

Thank you.

Mr. Brown, before the closing, did you see how much money was in the special account?

A No, I didn't, sir.

Q You testified that you had certain conversations with Lou Goodman and others at Commonwealth concerning purchasing of securities for their relatives and, as a matter of fact, you mentioned the Beneficial securities, is that correct?

A No, I didn't mention the Beneficial -- oh, yes, I did. I mentioned on the free riding section that I didn't see a prohibition about anyone's about relatives buying the stock because, according to the NASD manual, that was the only guide that I had.

Q Mr. Brown, would you be good enough to tell the Court what free riding means?

A Well, if it is an issue that the public can't get, that public should have a preference and insiders should not -- you know, people that are connected with the underwriters or relatives or something, there are

certain standards that are set and they should not get the stock as opposed to people who had no connection with the firm.

Q Did you at any time during the Beneficial offering or thereafter advise any principal employee of Commonwealth Chemical Securities that it was okay for them to open up accounts in relatives' names and not have their relatives pay for the stock?

A No, sir.

Q Did you at any time advise any employee or principal of Commonwealth Chemical Securities either during or after the Beneficial offering that they could open up accounts for relatives without informing their relatives?

A No, sir.

Q You mentioned in your testimony that there was trouble in selling the Beneficial offering, is that correct?

A Well, when I say trouble, it seemed to take a long time to get the minimum together because I know the time was -- well, it was three months or so. I don't recall, but --

Q Mr. Brown, was the minimum ever gotten?

A Pardon?

Q Was the minimum amount of securities ever sold

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prior to the closing?

A To my understanding it was.

Q How did you get that understanding?

A I got a list. They gave me a list of the total number that was --

Q Who gave you the list, Mr. Brown?

A Well, it came from the firm. You know, if you ask me who handed it to me, I don't recall at this time whether it was handed to me or what. It was prepared, it was prepared by the firm and handed to me.

Now, whether it was the back office or whether it was Drucker or how, it was prepared and given to me.

Q You mentioned in your testimony that you were party to certain conversations that Mr. Drucker had with a Mr. Thomas D'Allesandro of the law firm of Willkie, Farr.

Do you recall why Mr. Drucker wanted the funds, the Vanguard Fund and the New York Hedge Fund, to buy the securities?

MR. DEVINE: Objection, no foundation. It also calls for a conclusion as to what was in somebody else's mind.

THE COURT: Sustained.

Q Did Mr. Drucker ever tell you why he wanted

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the funds to buy the Beneficial securities?

A He never told me and I never asked. It was just that I felt uncomfortable with the transaction when I heard about it.

I was not involved, you know, with the funds, but sometimes you got this information, you know, through the grapevine or something, you heard some mention it and I just kind of raised a red flag.

Q Did there ever come a time while you were employed as an attorney at Commonwealth that you told Mr. Drucker or any principal at Commonwealth that it was okay for the funds to purchase the Beneficial securities?

A No, sir, absolutely not, because that just wasn't my province. They had outside counsel for that.

Q Mr. Brown, you stated that you attended the Beneficial closing on behalf of Commonwealth Chemical Securities, is that correct?

A Yes, sir.

Q Did there ever come a time when you represented Beneficial Labs, Inc.?

A I did, sir.

Q In what capacity and at what times, sir?

A Well, subsequent to the closing, I don't remember the time, they wanted to buy drugstores and they used to

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look up things -- they used to look up things in the newspaper or what have you saying -- and papers used to come back --

Q When you say subsequent to the closing, Mr. Brown, how long after the closing --

A I really don't --

THE COURT: Will you ask questions? You cut the witness off while he is half way through his answer.

MR. BENOWITZ: I'm sorry.

Q I repeat my last question.

How long after the Beneficial closing did you represent Beneficial Labs as their attorney?

A Well, I really -- I honestly could not tell you, you know.

Q Was it a month after, two months after?

A I don't remember when the first -- the real --

THE COURT: I can't take any more of this.

MR. BENOWITZ: I have no further questions.

THE COURT: We will recess until tomorrow morning at 10:00 o'clock.

MR. ORMSTEN: Your Honor, the record should reflect we have no further questions of this witness.

MR. DEVINE: No redirect, your Honor.

THE COURT: Witness excused.

(Adjourned to May 2, 1975 - 10:00 a.m.

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FOLEY SQUARE, NEW YORK, N.Y.

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Securities and Exchange Commission

vs. 74 Civ. 1984

Commonwealth Chemical Securities, Inc., et al

New York, New York.
May 2, 1975 - 10:30 A.M.

(Trial resumed.)

THE COURT: Good morning. Sorry I am late, gentlemen.

Let's proceed.

MR. DEVINE: Your Honor, the defense calls Robert Drucker.

R O B E R T C. D R U C K E R, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr.Drucker, are you currently employed?

A I am not currently employed.

Q When were you last employed?

A Approximately October, November of last year.

Q 1974?

A 1974.

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Q By whom were you employed at that time?

A I was employed by Commonwealth Chemical Securities.

Q In what position were you employed?

A I was the vice-president of the firm.

Q Were you ever a shareholder of Commonwealth Chemical Securities?

A I was.

Q Are you still a shareholder?

A Iam still a shareholder.

Q What percentage of the outstanding voting stock of that company do you own today?

A Approximately 25 per cent.

Q Who are the other shareholders?

A Julius Kleinman owns approximately 25 per cent and Federated Equities Corporation owns the balance of the approximately 50 per cent.

Q Is Commonwealth Chemical Securities currently an operational company?

A No, it is not.

Q When did its operation cease?

A It ceased operations approximately October or November of 1974.

Q Did there come a time when Commonwealth Chemical

3jwb R.Drucker-direct

Securities attempted to withdraw from the securities business?

A Commonwealth attempted to withdraw and filed the appropriate applications with the Securities and Exchange Commission to withdraw in July of 1974.

Q Did the applicationto so withdraw become effective at any time?

MR. BENOWITZ: Objection,your Honor.

THE COURT: Sustained.

MR. DEVINE: Your Honor, could I note the nature of the objection?

MR. BENOWITZ: This lineof questioning seems to be irrelevant, your Honor.

THE COURT: Sustained.

Q When Commonwealth Chemical Securities ceased operations, did any customers fail to collect securities or credit balances then in your account?

MR. BENOWITZ: Objection, your Honor.

THE COURT: Sustained.

Q Mr.Drucker, have you ever been associated with DK&B Management?

A Yes, I was.

Q During what period of time were you associated with that company?

A For approximately two years I was an officer of that company.

Q From what date until what date?

A Approximately late1971, early '72, I believe, until approximately mid-summer or mid-spring of 1974 when the corporation terminated its business operations.

Q In what way were you associated with DK&B Management during that period?

A I was president of that company.

Q Were you also a director of that company?

A I was also a director.

Q Is DK&B Management a currently operational company?

A No, it is not. It ceased all operations.

Q Do you know a Dorothy Rukasin?

A I do.

Q Is she a relative of yours?

A She is a sister-in-law by marriage.

Q Did there come a time when you retained or received a power of attorney to act on her behalf?

A Yes.

Q Was that a written or oral power of attorney?

A That was a writ ten power of attorney.

Q When approximately did you receive that --

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MR. BENOWITZ: Objection, your Honor. If they are speaking about a document, would they be kind enough to produce it?

THE COURT: Sustained.

MR. DEVINE: Your Honor, may I just get the background for this and then I will produce the document? I would just like to get it in proper order, get the chronology.

THE COURT: Why don't you produce the document as you go. It makes more sense to me if the document is where the witness is talking about it when I read the transcript, rather than 400 pages away.

MR. DEVINE: Your Honor, the difficulty is there are two documents here. I would like to get that clear on the record.

THE COURT: I sustain the objection.

MR. DEVINE: Could I have this document marked, please, as Defendants' Exhibit C for identification.

xx (Defendants' Exhibit C was marked for identification.)

Q Mr.Drucker, I show you what has been marked as Defendants' Exhibit C for identification and I ask if this is a document which you received.

A It is.

Q From whom did you receive the document?

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FOLEY SQUARE, NEW YORK N Y ... ? 4580

A I received the document from Irving Rukasin, father of Lori Rukasin.

MR. DEVINE: I offer Defendants' Exhibit C for identification in evidence, your Honor.

MR. BENOWITZ: Your Honor, plaintiff objects to the admission of this document. This is not an original. The signature of the purported Irving Rukasin is not notarized.

THE COURT: Let me see it.

Sustained.

Q How many powers of attorney, written powers of attorney, have you ever received from IrvingRukasin with respect to Lori Rukasin?

MR.BENOWITZ: Objection, your Honor.

MR. DEVINE: May I know the nature of the objection, your Honor.

THE COURT: Leading, among other things.

Q Mr.Drucker, did you ever receive a power of attorney to act on behalf of Lori Rukasin?

A I received two powers of attorney from her father.

MR. BENOWITZ: Objection, your Honor.

THE COURT: What is the ground?

MR. BENOWITZ: I believe we have been over this very point and the Court has ruled that if they are

going to testify about powers of attorney they ought to produce documents.

THE COURT: Since it is non-jury, it is not frankly worth very much without the documents.

Q You may answer.

A Could you please repeat the question?

Q Yes. Did you ever receive a power of attorney from anyone with respect to actions on behalf of Lori Rukasin?

A I received two powers of attorney from her father.

Q When did you receive the first one?

A One in I think late '71 or early '72, and the other stock power of attorney approximately late '72 or early '73.

Q Did there come a time when you opened brokerage accounts on behalf of Miss Rukasin?

A Yes.

Q Did you place orders for the purchase and sale of securities in those accounts?

A Yes.

Q Did you ever make use of Miss Rukasin's brokerage accounts in any way contrary to the powers of attorney?

A No.

Q Did you ever have any beneficial interest in any of Miss Rukasin's brokerage accounts?

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A I never felt I had any beneficial interest in her accounts.

MR. BENOWITZ: I object, your Honor. Could counsel have the witness define what he means by beneficial interest?

THE COURT: Well, it is a conclusion, whether somebody has a beneficial interest.

I will strike it out onthat ground.

Q At any time did you obtain from any of Lori Rukasin's brokerage accounts any moneys or securities which you used for your own personal benefit?

A Not to the best of my recollection.

Q Is your wife Dorothy Drucker?

A Yes, she is.

Q Did she ever maintain a brokerage account at Commonwealth Chemical Securities?

A She did.

Q When was the account or the accounts opened?

A I believe four or five years ago, but I am not certain of the exact date.

Q Would you tell the Court, please, the circumstances under which those accounts were opened?

A We were obviously happily married and in light of tax consequences of purchasing and selling securities, it

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was decided and she concurred that I would open and operate an account in the firm which would have securities in her name as well as my own account.

MR. BENOWITZ: Objection, your Honor. Could the witness please state what firm he opened the accounts for?

THE COURT: I can't hear you.

MR. BENOWITZ: Would the witness or counsel have the witness specify at what firm the accounts were opened? He is talking about accounts and a firm.

THE COURT: Yes. Be more definite. The answers are indefinite.

Q How many brokerage accounts were opened --

THE COURT: Please, let's go.

I don't apply the rules of evidence here. I will be here until next doomsday. Just let it go. Let me turn off my mind and read the transcript and see if I can somehow find a case for the defense here.

It is utterly impossible to follow it as it goes in. It is utterly impossible on both sides. So just go, go on, proceed.

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Q How many brokerage accounts were opened in the name of Dorothy Drucker to the best of your knowledge and recollection?

A I believe one account at Commonwealth Chemical Securities.

Q Are you aware of any accounts being opened at any other brokerage house in her name?

A I don't remember any.

Q With respect to the account at Commonwealth Chemical Securities, at the end of any regular period were monthly statements sent out?

A Monthly statements were sent out --

MR. DEVINE: I'm sorry for the question. I withdraw it. Let me make it clear.

Q At the end of any regular period were statements sent out with respect to Dorothy Drucker's account at Commonwealth Chemical Securities?

A Statements were mailed in accordance with NASD rules I believe every ninety days.

Q What part of Commonwealth Chemical Securities, what personnel were responsible for the mailing of those periodic statements?

A Back office clerical people.

Q Were you a back office clerical person?

A No, I was not, sir.

Q To the best of your knowledge, did Dorothy Drucker ever object to you to any transaction that was reflected in any statement sent to her at the end of any regular period?

A She never did.

Q On September 19, 1972, did you have occasion to speak with Vincent Caccesse?

A I did.

Q Do you recall during what portion of the day you spoke to him first?

A I spoke to him early in the morning, I believe sometime between 10:00 and 10:30.

Q Was this in person or by telephone?

A This was by telephone.

Q Would you tell the Court, please, what you recall being said by Mr. Caccesse to you and by you to him?

A I called Mr. Caccesse as an officer of the mutual fund and ordered the purchase of shares of Beneficial Labs. Mr. Caccesse asked me for information regarding the account, my position with the fund giving the order, which was authorized, and I gave him that information and gave him instructions as to the purchase of the

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shares, that he should get the best possible price, and I put a price limit on the order.

MR. BENOWITZ: Objection, your Honor. Could they be kind enough to tell us what fund.

THE COURT: You can cross examine at the appropriate time.

Q On behalf of what mutual fund or investment fund did you call Mr. Caccesse on that day?

A On behalf I believe of the New York Hedge Fund which was known I believe at that time as the Berkley Dean Fund.

Q Did there come a time later that same day when you spoke to Mr. Caccesse again?

A I did speak to him later in the day at which time he confirmed the purchase of shares for the fund .

Q Well, would you tell the Court, please, what you recall being said in the conversation and by whom?

MR. BENOWITZ: Objection, your Honor. Could they at least tell us what company's shares are the subject of this comversation with Mr. Caccesse?

THE COURT: You can cross examine on that.

Q Tell us --

THE COURT: If he doesn't make definite it is his tough luck, not yours. I am not going to fall for

a lot of hogwash. I need facts. There is no jury here.

Let's go without interruption.

Q Mr. Drucker, tell us in the second conversation that you have been describing what was said and by whom?

A Mr. Caccesse called me on the phone to confirm the purchase of I believe 8,000 shares of Beneficial Labs stock for the fund in conformity with the order that he had been given earlier in the day.

Q And did he tell you the manner in which he made that purchase?

A I believe he bought it in the marketplace, but I don't recall him confirming to me where or how he bought it.

Q Did there come a time when you learned where Mr. Caccesse had been able to purchase this stock that you had ordered on behalf of New York Hedge Fund?

A Yes.

Q On what date did you learn that?

A That same afternoon.

Q From whom did you learn it?

A I learned it from one of my employees who had been in the office during my absence when Mr. Caccesse had been executing the order in the marketplace.

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Q What did this employee tell you?

A The employee told me that our firm had sold 8,000 shares of Beneficial Lab stock to Mr. Caccesse's firm.

Q On September 19, 1972, did you believe that this transaction, this series of transactions which had occurred and which you have been describing, was in any way improper?

A No, I didn't.

Q And did you have any basis for belief that it was proper?

A My basis was discussions that I had with counsel for the funds, Mr. Tom Delesandro, Wilkie, Farr & Gallagher, who in many previous discussions relating to the Beneficial Labs purchase had advised me that there was nothing wrong with the purchase of Beneficial Labs securities by the funds.

Q In one of your conversations with Mr. Delesandro was Manny Brown a party to the conversation?

A Manny Brown was a party to a conversation prior to the initial purchase of any shares of Beneficial Labs in which Tom Delesandro confirmed the text of the discussion relating to the fact that there would be nothing wrong with the funds purchasing shares of Beneficial Labs.

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Q Let's try and get the conversation itself.

Was there a telephone conversation?

A This was a telephone conversation with Manny Brown, Tom Delesandro and myself.

Q Would you please tell the Court what you recall being said in that conversation and by whom?

A Mr. Brown had raised the question with me in discussions as to whether or not the funds could buy the Beneficial shares after I initiated that discussion.

He suggested reconfirming for his own edification whether or not this was Tom's or Wilkie, Farr's opinion as to the ability of the funds to do the transaction so that we should not violate the Securities laws.

I placed a call to Tom, which Manny was a party to in my office, got him on the phone and went through the steps to get to where we were and that the funds were considering the purchase, we were considering recommending it to the funds and was there anything wrong with it.

If so, what should we do or not do. And if it was okay could we then go ahead and how should we go ahead to not violate the Securities laws.

Q Precisely what did you tell Mr. Delesandro about the prospective transaction? How did you describe it to

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him?

A I described to him the facts relating to the underwriting, that the company was consummating an acquisition business prospects looked well, we were a marketmaker in the security, there were four or five other marketmakers in the security, and based on the prospects for the company I thought from a capital gains standpoint the fund would do well to buy the shares, that they would make money.

Q And do you recall precisely what question or questions you asked Mr. Delesandro at that time?

A I asked Mr. Delesandro if and what if anything would be wrong with Commonwealth selling the shares to the funds directly.

Mr. Delesandro said that was not kosher, not good; that as long as the funds purchased the shares from another marketmaker and got the best possible price for execution, that there would be nothing wrong with that purchase.

Q Mr. Drucker, had you ever spoken to Gerald Wolff?

A I have on a number of occasions.

Q Do you recall when you first spoke with him?

A I believe I first spoke to Gerry Wolff in December of '71, January, February and March of -- no,

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I'm sorry, that is the wrong time frame. December of '72; and January and February and thereafter of 1973, the first time in December and January.

Q Have you ever spoken to Darold Shirwo?

A I have spoken to Mr. Shirwo on several occasions.

Q Do you recall when youfirst spoke to him?

A I first spoke to Mr. Shirwo I believe sometime in January -- late January, middle January of 1973.

Q Would you please describe the events briefly which led to your first conversation either with Mr. Wolff or with Mr. Shirwo?

A The conversation -- the first conversation I had with him arose as a result of Gerry Wolff's conversations with an employee trader of our firm Mr. Bob Reivens who was a good friend of his for a substantial period of time and they related to the interest of Cabot-Shaw which was formerly Securities Unlimited of Beverly Hills in having greater distribution and trading interest in the securities of several of their companies.

One of them was Environmental Devices which was a California company that Cabot-Shaw underwrote.

And Mr. Wolff contacted Mr. Reivens and since I was the head trader at the firm, Mr. Reivens

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came to me and put forth the proposition that they would like to have some greater retail distribution, greater trading interests and some good New York marketmakers in the issue. That was the initial discussion.

Q Let's focus on your first discussion with Mr. Wolff or Mr. Shirow.

Do you recall which of the two you spoke to first?

A I spoke to Mr. Wolff first.

Q When was that conversation, to the best of your recollection?

A It was in December or January of '72-'73 area.

Q Was that a telephone conversation?

A It was a phone conversation.

Q Was anyone else on the line other than you and Mr. Wolff?

A Bob Reivens who was an employee of our firm was on the line in the initial conversation.

Q Will you tell the Court please what was said in the conversation and who said it?

A Mr. Wolff requested help in retailing or helping to trade the shares of EDI.

Q What is EDI?

A Environmental Devices, I am sorry. EDI was the initials given to trading purchases. And he asked

me if I could help in distributing securities in the after market of this underwriting that they had done.

I told him if he would send the information on that situation and other trading situations that they might need help in, I would look at it, review it. If I had an interest, you know, I would get that back to them.

Mr. Wolff in the same conversation thought that was very nice, is there anything that our firm was interested in that they might offer some reciprocal help on, trading help.

I mentioned to him the only interest we had any retailing interest in was Beneficial Labs.

He asked me to send him the information on that security and they, too, would consider whether they might be of some help to us.

I did send him the information. That was in the middle of January of --

Q Of what year?

A I believe in '73.

Q You sent them what kind of information?

A I sent them annual reports, whatever financial statements might be around on the company.

Q With respect to what company?

A Beneficial Labs.

Q And didyou receive from Cabot-Shaw any material relating to any stocks in which they had a position?

A I did receive prospectus and some kind of public relations report on Environmental Devices and two or three other companies that they had had an interest in.

Q Did you review that material?

A I reviewed that material and I thought that the prospect, the business prospects of Environmental Devices were interesting and that the possibility for the stock appreciating was there.

Q Now, after you had sent the material with respect to Beneficial Labs and received the material with respect to Environmental Devices, did you again speak with Mr. Wolff?

A I did speak to Mr. Wolff and --

Q When next to the best of your recollection?

A I think this was approximately the first week in February of '73.

Q And was this a telephone conversation again?

A This was a phone conversation.

Q Who was present on the wire at that time?

A Wolff had called and spoken to Bob Reivens our trader and in the middle of the conversation, Bob asked me to pick up and talk to Gerry Wolff, to discuss the items of mutual interest.

Q And did you do so?

A I did.

Q What was said in the conversation and by whom?

A Mr. Wolff asked me if I had read and reviewed the material and whether I had any thoughts.

I said I did; that I thought the Environmental Devices had some potential, that the stock could do well, it was in a glamorous industry and I felt I might be able to help him in terms of either retail distribution or most certainly by being a trader with a somewhat like a correspondent relationship with him, with me being in New York and him being in California and we agreed to act, in that conversation, as correspondents in general on some securities.

He mentioned that he had reviewed the Beneficial

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material and felt that he, too, could assist in retail distribution of the shares to broaden the depth of the market.

He suggested that in order to do anything in terms of commitments, that I should speak to Mr. Shirwo, since he was the principal of the firm and work out whatever it is in terms of trading positions, correspondent authority and so forth that we would each have.

I did speak to Mr. Shirwo in the same conversation and we had both agreed that we would attempt to assist in the retail distribution of each other's securities securities and as a correspondent trading relationship between our respective firms.

Q During February of 1973, did Commonwealth Chemical Securities and/or its customers purchase Environmental Devices stock from Cabot-Shaw?

A They did.

Q In connection with those purchases, did Commonwealth give Cabot-Shaw any assurance that it would not resell the Environmental Devices stock?

A It not only gave them no assurances but several of our customers who took large positions began selling their security almost immediately within two weeks after the purchase.

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Q After purchse by Commonwealth Chemical Securities, did the firm itself make any resales of the Environmental Devices stock?

A Commonwealth bought some shares of stock for its trading account and in terms of making an orderly market, every time a purchaser would come in to buy the stock we would sell it. That was the purpose of our being there, to purchase and sell securities and make money, trade.

Q During February of 1973, did Cabot-Shaw purchase from Commonwealth or any of Commonwealth's customers Beneficial Lab securities?

A It did.

Q Did Cabot-Shaw agree to any conditions or restrictions with respect to its holding or trading of the Beneficial Lab securities which were being purchased?

A To the best of my knowledge, they did not agree to any restrictions and I did no- ask them for any trading restrictions.

Q During February of 1973, did the New York Hedge Fund sell 3,000 shares of Beneficial Labs common stock to Cabot-Shaw?

A It did.

Q Did DK & B Management as advisor to that fund

direct that sale?

A Yes.

Q Who on that occasion acted on behalf of DK & B Management?

A I did.

Q Do you recall what your reasons were for directing this sale at that particular time?

A Number one, we wanted to loosen up some money in the fund's portfolio. The stock had appreciated. We wanted to take a captial gain and it was an investment decision to sell shares in Beneficial Labs at that time.

Q Prior to this sale by New York Hedge Fund, did you make any promises to Cabot- Shaw with respect to the stock?

A I made no promises with regards to the stock other than a request that Shirwo made there was a lot of stock information. If I would see any buyers in the stock or could help him to sell any of it, I told him I would be delighted to.

Q Was this a conversation you had with Mr. Shirwo?

A This was a conversation that I had with Mr. Shirwo.

Q Do you recall when it took place?

A I believe in the third week of February of '73.

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Q Was this again a telephone conversation?

A This was a phone conversation between myself and Darold Shirwo.

Q Tell us what was said in the conversation.

A I called Mr. Shirwo and said that, acting as an officer of the fund I wanted to sell 3,000 shares of Beneficial Labs stock; would he have any interest or thoughts and the purpose for my thinking that he might was several weeks earlier he had just bought a great deal of stock and if he had had any success in retailing it or distributing it, he might very well have another avenue or an idea what he might do with the stock.

Mr. Shirwo said that there was a lot of stock and in terms of his trading positions he didn't know hwo quickly he could do anything, what would I be interested in selling it for, what price, and so forth.

We negotiated. He agreed to buy the shares and he did ask that if possible I should try and help him find some buyers since he was a marketmaker and that was his only function in purchasing the shares.

Q Subsequently, did a Commonwealth Chemical Securities customer purchase Beneficial Labs common stock from Cabot-Shaw?

A At a subsequent time, a Commonwealth customer

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did buy stock from Cabot-Shaw.

Q Do you recall who that was?

A I believe his name was Joe Arner.

Q Had this purchase by Mr. Arner been agreed to between Commonwealth and Cabot-Shaw prior to sale of the 3,000 shares by the New York Hedge Fund?

A No, sir.

Q I would like you to focus now on the initial offering of Beneficial Labs units.

Were certain sales made, confirmed in that offering to people other than the actual purchaser of the Beneficial interest in the units?

A I would reiterate Mr. Benowitz' point in terms of Beneficial interest.

Could you clarify that, please?

Q Did you receive, did Commonwealth Chemical Securities receive any orders in the Beneficial Labs offering from any customers or customer which orders were eventually consummated but confirmed to names other than the name of the person placing the order?

MR. BENOWITZ: Objection, your Honor.

Q Did that occur?

A Yes.

Q Would you tell the Court the circumstances

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of what occurred and how it came to happen?

A The customer, whose name was Davis Massad called the firm and spoke to me and mentioned that he would have an interest in buying Beneficial Labs units at the offering. He had heard of the issue through a mutual friend.

He asked me to send a prospectus -- rather an offering circular, excuse me -- which I did and he called me and said that he wanted to buy a certain number of units.

He mentioned that he did not want it to appear in his own name and asked me if in any way I could assist him in finding people who would not mind being nominees for his account and that was the text of my conversation with Mr. Massad.

Q What did you say to Mr. Massad?

A I said that I would try and, as long as he was going to pay for the issue I saw nothing wrong with it and would speak to several people about it, see if anyone would have such an interest.

Q Did you so speak to several people?

A I spoke at the time I was talking to Mr. Massad, my trading assistant Miss Joanne Reichen was there. She overheard the conversation and when I concluded

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with Mr. Massad, I asked her, Joanne, would you have any girlfriends who would mind being nominee for a customer who wants to buy the stock and he doesn't want to put it in his own name.

I told her I didn't see that there was anything wrong with it, he would be paying for it, there would be no financial exposure. I was not aware of any other reason why there would be anything wrong.

I believe Joanne placed several calls to a number of her friends and she advised me that four girls who were friends of her would have no objection as long as it didn't cost them any money and they would not mind.

Q Did you have any interest in Mr. Massad's purchase of Beneficial Labs units?

A I had no interest in it.

Q Did you provide him with the funds with which he made this purchase?

A No, sir.

Q Did you share in any profits that he may have made or contribute to any losses that he may have had in reselling the units?

A No, sir.

Q Prior to Mr. Massad making this order or in connection with his making of this order, did you make

him any promises with respect to resale of the securities he was going to purchase?

A No.

Q During the time that you were a director of the New York Hedge Fund and the Vanguard Fund, did you receive reports on securities transactions by those funds?

A Reports were issued monthly by the custodial and transfer agent for the fund.

Q And who was that custodial and transfer agent?

A First Pennsylvania Bank & Trust Company.

Q Did these reports show the securities transactions during the period?

A They did.

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Q Did these recorts contain any other information?

A Net asset value, computations, gross assets, expenses that had been paid during the month, new subscriptions if any, and redemptions.

Q To whom were these reports distributed?

A The reports would come into our office on a monthly basis. Approximately once every two months or at a meeting of directors we would distribute copies of the report to the -- all of the directors who were there in attendance. Or we would mail them if there was no meeting in that two-month period.

Q Did you ever ask Mary Sharpe to purchase any Beneficial Labs units in the offering of that security?

A No,sir.

Q Did you ever ask Lou Goodman to purchase any Beneficial Labs units in the offering of that security?

A No.

Q Are you familiar with SEC rules regarding the computation of securities profits and losses and so-called marking to the market?

A Totally.

Q I show you Plaintiff's Exhibit 14, 15 and 16, and ask whether you have had an opportunity during last evening to review those documents?

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A I did review copies of these documents last evening.

Q Now, looking particularly at the documents which have been marked as Plaintiff's Exhibit 14, which contains separate sheets for various brokerage accounts, do those charts, the individual sheets in that exhibit, show open securities positions at the end of the time period covered by those sheets?

A In many instances --

MR. BENOWITZ: Objection, your Honor.

THE COURT: Overruled.

Q You may answer.

A In many if not all the instances there are large open securities positions for each and every customer. For each and every individual named in these exhibits.

Q Are you familiar with the current market for Beneficial Labs common stock?

A Yes, sir.

Q And what is the current market price?

A It is 1-1/2 bid. That is the highest bid that prevailed in yesterday's market.

Q Last evening when you had an opportunity to review these charts, did you mark the open positions shown on these charts to the market?

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A I marked them to the market in two respects, two separate computations -- one based on the price of the shares on the day the stock was suspended, which I believe these exhibits purport to relate to trading activity prior to that date in conformity with the SEC's method of marking to the market and then I marked them to market again at today's price which was much more favorable than the original mark versus the date that the stock was suspended to give best light treatment to the SEC in determining in my opinion the accuracy of their computations.

xxx

(Defendants' Exhibit D was marked for identification.)

MR. DEVINE: Defendants' Exhibit D is a series of Xerox sheets.

Q I hand you Defendant's Exhibit D for identification which I represent to the Court is a Xerox copy of Plaintiff's Exhibit 14, which I prepared yesterday after court, and I ask you, Mr.Drucker, if on this Xerox, set of Xerox sheets which are Defendants' Exhibit D for identification you have made notations which indicate the marking to the market procedure that you have already described?

A That's correct. The sheets are, do contain my marks to the market on all the positions.

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Q As a result of your operations, your review in marking these accounts to the market, would you go through the pages of Plaintiff's Exhibit 14 and tell us what net profit or loss, after marking to the market, you have arrived at for each of the accounts and tell us the name of the account prior to telling the net profit or loss.

MR. BENOWITZ: Your Honor, I respectfully object to this question.

THE COURT: Why?

MR. BENOWITZ: He is asking the witness to go through --

THE COURT: I heard why he asked him. Why are you objecting?

MR. BENOWITZ: Plaintiff's Exhibit 14 speaks for itself, your Honor.

THE COURT: Sustained.

MR. DEVINE: Your Honor, could I make an offer of proof?

THE COURT: Sure.

MR. DEVINE: The witness, who is qualified in this business, has done procedures which the SEC started to do with their witness and he has brought those procedures up to date, he has carried through, based on the SEC's own figures.

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The procedure which they have started in these charts which are in evidence and made them current and complete and he, I think, is as well qualified to do that as the SEC witness.

THE COURT: But the objection is that it speaks for itself.

MR. DEVINE: But the question goes to -- I have asked him to go through and indicate the result of his own preparations and review account by account.

THE COURT: Doesn't the chart show that?

MR. DEVINE: No.

THE COURT: What do you put it in evidence for, what good is it to me if it doesn't show what it purports to show? Either it speaks for itself, or it doesn't, it is useless.

MR. DEVINE: At this time I would offer in evidence Defendants' Exhibit D for identification.

THE COURT: How much longer do you expect to be with this interminable hearing.

MR. DEVINE: Your Honor, this is my last question.

MR. ORMSTEN: If the Court please, may the plaintiff have a short voir dire on this offer?

THE COURT: Yes.

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VOIR DIRE EXAMINATION

BY MR. ORMSTEN:

Q Mr. Drucker, in respect of the notations on the chart reflecting the transactions of Dorothy Drucker, have you been in communication with Dorothy Drucker concerning her present stock positions?

A In present communication, sir?

Q In communication concerning the figures which you have made on this chart as to the stock position that she presently has?

A I have not communicated any of these results that I have computed with Dorothy Drucker.

Q No. My question to you, sir, is have you ascertained from Dorothy Drucker as of the day that you marked the securities to market what her position is in the stock?

A Well, I marked the positions to the market last night, Mr. Ormsten.

Q Right, and do you know of your own knowledge if Dorothy Drucker has the positions which you have worked from?

A Do I know whether today she has the positions reflected in your statements?

Q That's right, positions that you based your loss figures on or your calculations on generally?

A Well, I am not attempting by virtue of your sub-

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missions to say that your statements are at all accurate or correct and I am not going to --

MR. ORMSTEN: I respectfully move to strike the answer as unresponsive.

THE COURT: Sustained. Strike it out.

Q I repeat the question, sir.

Have you communicated with Dorothy Drucker at or about the same time that you most recently marked the security values to market?

A No, I did not communicate last night with Dorothy Drucker relating to this exhibit.

Q Sir, are you a certified public accountant?

A No, I am not.

Q Are you an accountant, sir?

A No, I am not.

Q Have you communicated with Mary Sharpe whose transactions are also reflected on this sheet or at least whose stock position and transactions are reflected here, concerning her present position in the stock?

A I have had no communication with Miss Sharpe in terms of asking her about her present stock position.. In Beneficial Labs.

MR. ORMSTEN: Your Honor, the plaintiff respectfully objects to the admission of this document on two

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grounds -- the first ground is that there is no expertise residing in this witness who has made the calculation and the second ground is that he is calculating from this document losses, on the basis of stock positions which he does not know if the individuals whose transactions are reflected, have or have not at this point in time?

THE COURT: Well, what expertise is required to do arithmetic?

MR. ORMSTEN: The expertise, your Honor, involves marking the stock to the market, calculating --

THE COURT: What is involved in that? What is involved that anybody can't do if he knows what he is doing

MR. ROMSTEN: In response to the Court's question, may I go one step further.

Q Sir, where did you get the market valuations that you used in marking the stock to market?

A As I mentioned in my testimony, I used two bases for determining the market. Number 1, the first public trading market that existed after the suspension in the securities were lifted, and for a period of approximately, almost two months, there was no public trading market whatsoever.

Q I understand what you are saying as far as the time when you gpt the valuation. My question is, where

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precisely didyou draw the information from.

THE COURT: The date on which you got it. What is the Wall Street Journal or the pink sheets or what?

A I looked in the pink sheets for the valuation for a period of time after the suspension was lifted.

Q When did you do that, sir? Last night?

A No. No. I remember quite well, Mr. Ormsten, for at least a one month period after the suspension was lifted --

THE COURT: Let me see the chart.

MR. ORMSTEN: Your Honor, I would just like to get --

THE COURT: It may not be admissible on its face.

MR. ORMSTEN: May I get one question on the record?

THE COURT: Yes.

Q Is it your testimony thatyou calculated the first set of figures from memory?

A There is no calculation based on the SEC's method of net capital.

MR. ORMSTEN: Withdrawn.

Q Is it your testimony --

THE COURT: SAme your breath. I won't admit it.

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It is not pegged to any evidence before the Court.

There is no foundation in the evidence for the chart.

MR. DEVINE: I would just like to indicate, your Honor, that it seems to me that Mr. Ormsten's voir dire on this impeaches their own document because --

THE COURT: Please, please. I am not worrying about their document, but the one you offered. You have not put in a foundation for it. If you want to put it in, lay the foundation.

MR. DEVINE: I have no further questions of this witness, your Honor.

MR. BENOWITZ: Your Honor, can the plaintiff respectfully request a five-minute recess?

THE COURT: Sure.

(Recess.)

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CROSS-EXAMINATION

BY MR. BENOWITZ:

Q Mr. Drucker, you testified that you are not presently employed, is that correct?

THE COURT: You don't have to bring it out again.

Q Mr.Drucker, isn't it a fact that you are receiving $500 a week from Beneficial Labs?

A As a consultant I am receiving that amount of money.

Q For how long have you been receiving that amount, Mr.Drucker?

A Approximately five or six months.

Q Have you been receiving it since the close of Commonwealth ChemicalSecurities?

A Several weeks after I closed Commonwealth I did.

Q Weren't you receiving consideration from Beneficial Labs as an adviser to that company from the time that you underwrote the stock?

A No, I personally was not.

Q Was Commonwealth?

A Commonwealth did receive, I believe, 900 or $1000 a month from Beneficial to act as an adviser.

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Q Can youtell me what duties you perform for Beneficial Labs for this $500 a week?

A I review and assist them in negotiating leases, new operations. I provide financial counseling for them whenever and in whatever manner they ask.

Q What was the last lease you helped to negotiate?

A A lease at a pharmacy that is going to be located in a church which seems rather humorous, but they just negotiated a lease a few days ago which was signed and went into effect May 1.

Q Mr.Drucker, did you ever speak to MichaelRekoon concerning the Lori Rukasin account at Amherst Securities?

A I believe I had spoken to Mr. McHeon or Joe Schecter about that account.

Q Isn't it a fact that the conversation concerned a sale by the Rukasin account that you opened at Amherst Securities of 7000 shares of Beneficial Labs? Isn't it a fact?

A I didn't understand. Is that a question or a statement?

Q That is a question.

A I didn't hear the question. I am sorry.

(Question read.)

A I did have a conversation with the gentleman with

regard to that transaction.

Q And isn't it a fact, Mr. Drucker, on that very same day you opened up an account for Lori Rukasin at Amherst Securities that you also opened up an account at the New York Hedge Fund at Amherst Securities?

A I don't recall that, I am sorry.

Q Isn't it a fact that you ordered 7000 shares of Beneficial Labs on behalf of the New York Hedge Fund at Amherst Securities at some time?

A I really don't recall whether that is correct or not, Mr.Benowitz.

Q Mr. Drucker, doyou recall testifying at your deposition on October 7, 1974, at the office of the Securities and Exchange Commission?

A I remember two depositions before the staff, yes.

Q And do you recall being asked this question and giving this answer --

MR. DEVINE: Could I have the page?

MR. BENOWITZ: Page 300.

Q "Who, if anyone, acting on behalf of Vanguard Fund, Inc., placed an order of 7000 shares of Beneficial Labs?

"A I placed the order for securities. I don't recall the date."

A I think, Mr.Benowitz, if I am not mistaken, I believe youasked your other question incorrectly. I believe you assumed or made a statement that I bought or ordered that for New York Hudge Fund and I responded to that question.

Q I am sorry, Mr.Drucker.

Mr.Drucker, do you recall placing this order for the 1000 shares on behalf of the Vanguard Fund on the same date thatyou sold on behalf of the Rukasin account 7000 shares of Beneficial Securities?

A I believe I placed that order either the day before or on that day, that is correct.

Q Did you ever give Lori Rukasin any proceeds from the sale of 7000 shares on the day you placed the order on behalf of the Vanguard Fund?

A The proceeds from that sale remained in and were the property of Lori Rukasin.

Q Mr.Drucker, that is not responsive to my question. I asked you if you ever gave the proceeds of that sale which you sold at Amherst Securities on behalf of Miss Rukasin to Miss Rukasin.

MR. DEVINE: Your Honor, I object to the form of the question in that it assumes Mr.Drucker had the power to give anything in an account at another brokerage house.

MR. BENOWITZ: Mr.Drucker already testified he had power of attorney.

THE COURT: Overruled.

MR. DEVINE: He didn't have the power of attorney for Amherst Securities.

THE COURT: Overruled.

Did you do it, yes or no?

A I did not physically give Lori Rukasin the proceeds of that transaction.

Q What did you do with the proceeds of that transaction?

A I used them to purchase securities for her at a later date.

Q Did you put it in her account at Commonwealth Chemical Securities?

A I don't recall physically what was done with that check.

Q Mr.Drucker, I now show you what has been marked for identification as Plaintiff's Exhibit 21. Have you ever seen that check before today?

A I believe you showed it to me once prior to this at one of our meetings.

Q Do you ever recall seeing it before that meeting?

A I really don't recall seeing it.

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Q Didn't you receive this check from Amherst Securities?

A I personally never received this check, to the best of my recollection, from Amherst Securities.

Q Do you recall what the proceeds were on the sale of 7000 shares at Amherst Securities on behalf of Miss Rukasin?

A This would approximate the amount, on that check.

Q What was it?

A I can read the check. It says $49,262.50.

THE COURT: Put it in evidence.

MR. BENOWITZ: I don't believe the witness can identify it properly so I can't offer it in evidence at this time, your Honor.

MR. DEVINE: I move to strike the description of the document, your Honor.

THE COURT: Yes, strike it out.

Q Mr.Drucker, do you recall the approximate amount of proceeds from the sale of Miss Rukasin's 7000 shares of stock at Amherst Securities?

A Approximately $49,000.

Q Mr.Drucker, I now show you what has been marked for identification as Plaintiff's Exhibit 22. Have you ever seen this before?

A With the possible exception that you may have shown it to me in one of the statements, I don't recall seeing it.

Q Would you look at the entire document, please?

(Examining.)

A I have read the document.

Q Have you ever seen the front cover of that document before, the first page?

A I don't recall seeing it. I don't dispute its authenticity. I just don't recall seeing it, and in the second page of the document it nowhere states that I did.

Q Didn't you deposit the proceeds of the sale from theRukasin sale of 7000 shares of Beneficial Labs at Amherst Securities in Commonwealth's account at the American Bank & Trust Company?

A From the deposit slip it would appear --

Q Did you or did you not?

A I don't recall, sir. I didn't pick up the check.

Q Did you cause it to be done?

A Did I cause what to be done?

Q The approximately $49,000 to be deposited in Commonwealth Bank & Trust Company.

MR. DEVINE: Objection to the form of the question.

THE COURT: Sustained.

Q Isn't it a fact, Mr. Drucker, that you took the proceeds or caused the proceeds of the Rukasin sale at Amherst Securities to be deposited in Commonwealth Chemical account at the Commonwealth Bank & Trust?

A I remember instructing that the funds should be delivered to Commonwealth. I didn't pick up the check, because the delivery -- it does appear to be the amount of money involved, but I can't verify your deposit slip in that amount. We were doing an enormous securities business and 50 checks a day may come in. I can't say that check was that item.

I am trying to be helpful, but I just don't know, Mr.Benowitz.

Q I appreciate that. Mr.Drucker, weren't the statements of Dorothy Drucker's account at Commonwealth Chemical Securities sent to your home?

A Yes.

Q Did you have occasion to see those statements at your home?

A Did I see the statements that came to my home?

Q The statement of Dorothy Drucker's account at Commonwealth Chemical Securities.

A I am sure I did, yes.

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Q Did you ever discuss it with your wife?

A No, I don't think we went into any great detail about it.

Q Did you ever show the statements to your wife?

A She used to get the mail every day and open it, sir.

Q Did you ever show the statements to your wife?

A She had them before I got them. It was not a matter of me showing them.

THE COURT: Would you mind answering the question? Did you show them to her?

THE WITNESS: Did I?

THE COURT: Yes.

THE WITNESS: No, I didn't. I am sorry.

Q Mr.Drucker, where did Mr. Massad live during the period of time you were calling him regarding the purchase by him of the Beneficial securities?

A Massacnusetts.

Q Were the Beneficial securities a public offering, a blue sky offering in Massachusetts?

A I don't believe a blue sky application was ever completed.

Q So the answer to the question is they weren't?

A No,not to the best of my knowledge.

Q Did you have occasion prior to the offering to go over the forms and offering circulars given to the Securities and Exchange Commission concerning the Beneficial offering?

A I did go over them.

Q Did you ever purchase 9500 units which Commonwealth sold to Mr. Massad back from Mr.Massad?

A I believe, Mr. Benowitz, that Mr. Massad only bought 8000 units. I don't believe he bought 9500 units.

Q Weren't 9500 units DVP'd to the Worcester County National Bank up in Boston?

A 9500 units were DVP'd to the bank in Boston.

Q What was the reason for that?

A 1500 of the units were sent in error to Mr. Massad, 8000 were ordered by him for his purchase. He, just as we inadvertently overshipped,his bank overpaid.

Q Did you give him back the money that his bank overpaid?

A Sure, he got it back.

Q Did he get 1500 units back from his bank?

A Sure.

Q In whbse name were the 1500 units?

A Pete Russo.

Q My question, Mr.Drucker, did you ever purchase

what you say now is the 8000 units back from Mr. Massad?

A I did.

Q When did you do that?

A I did that, I believe, in late March of 1972.

Q That would have only been a couple of weeks after the closing, is that correct?

A Two or three weeks after the closing, yes, sir.

Q Did you purchase those 8000 units that you said you did in a private transaction?

A Yes, I did, sir.

Q Why did you do it in a private transaction?

A Number 1, to save commissions for both parties in the transaction.

End 3A

Q Couldn't you have done it through Commonwealth Chemical?

A Mr. Massad would have charged commission. I could have done it with no charge, but I think my partners would have interjected.

Q Which partner?

A Mr. Kleinman.

Q Did he know about the 8,000 purchased by Mr. Massad?

A Whatever he saw in the books and records.

Q Did you ever tell Mr. Kleinman that the 8,000 units were DVP'd up to Mr. Massad?

A Only after the investigation arose. I didn't discuss it with him prior to the offering or the DVP.

Q Do you recall when you did discuss it with him?

A No, but it was subsequent.

Q Do you recall if anybody else was present when you discussed it with him?

A Discuss which?

Q What we are talking about, the 8,000 units being DVP'd to Mr. Massad.

A In the sense of my instruction to someone?

Q No, the question was, Mr. Drucker, did you

ever tell Mr. Kleinman about this?

A I answered that.

Q You said it was sometime after the investigation. I am now asking you if you recall when after the investigation.

A I'm sorry, I don't remember the exact time.

Q Do you recall who was present?

A Jules and I would have been alone probably.

Q Do you recall where the conversation took place?

A It would have been in Commonwealth's office.

Q You are not positive, is that correct? It would have been or it was?

A I said I don't recall it.

Q Thank you.

Is it possible that you told him before the investigation, Mr. Drucker?

MR. DEVINE: Objection to the form.

THE COURT: Sustained.

Q Did the books and records of Commonwealth Chemical reflect that David Massad purchased 8,000 units of Beneficial Labs?

A No.

Q Didn't the books and records of Commonwealth

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reflect that those same 8,000 units that you sold to Mr. Massad were in the names of four nominee accounts? Is that correct?

A Four nominee accounts of Mr. Massad, correct.

Q Mr. Drucker, did you ever taken any test given by the New York Stock Exchange or the National Association of Securities Dealers?

A Yes.

Q Did you pass those tests?

A Yes.

Q Can you tell me which tests you took?

A Well, maybe eight or ten years ago I took the NASD, rather the New York Stock Exchange registered representative exam; I took the NASD registered rep exam and I took the NASD principal exam.

Q Did you go to school to learn anything with regard to those tests?

A No, I didn't, sir.

Q Didn't those tests ask you questions regarding the propriety of the books and records of a broker-dealer?

A I don't recall the specific questions relating to that.

Q I didn't ask you if you recall that.

Did they cover that area of books and records?

A I really don't recall the exam.

Q Mr. Drucker, did you attent a closing of the Beneficial public offering?

A I don't believe that I was there, although in our previous deposition I have stated that other people have said I was there. It is possible I was there.

Q Were you there or not there?

A I don't recall being there, Mr. Benowitz.

Q Do you recall why the issue was closed on March 10th, 1972?

MR. DEVINE: I'm sorry, did you ask why it was closed?

MR.BENOWITZ: Yes.

MR. DEVINE: Objection to the form.

MR. BENOWITZ: I withdraw the question, your Honor.

Q Were all the securities for the minimum 50,000 units paid for as of March 10, 1972?

A I believe they were.

Q You believe or do you know?

A I think -- I believe they were.

Q At the time of the closing on March 10, 1972, did you believe they were?

A Yes, sir.

Q What led you to believe that?

A The fact that we had confirmed out to all the customers that had bought it that they had bought it and we had sufficient monies in the account to close.

Q In what account?

A In either -- first of all the customers accounts who would have bought them, the DVP account on one of the trades and in the special accounts to pay Beneficial the amount of money that was due to them.

Q How much money -- how many securities or units were sold as of March 10, 1972?

A I believe 50,000, 650.

Q Do you recall what the approximate dollar value of those securities would be?

A The gross value would have been approximately $113,000.

Q Do you recall the terms of the Beneficial offering?

A Some of it, yes.

Q Isn't it a fact that pursuant to the terms of the Beneficial offering all funds raised by the Beneficial offering were to be deposited in the special account?

A It was my interpretation that we complied with that.

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Q I didn't ask you that.

I said, isn't it a fact that all funds received as a result of the Beneficial offering prior to the closing were supposed to be deposited in the special account set up pursuant to the terms of the offer?

MR. DEVINE: Objection, your Honor. This calls for a conclusion.

THE COURT: Sustained.

Q Did you check to see how much money was in the special account as of March 10, 1972?

A I did confirm the amount of money in the account.

Q How did youdo that?

A I requested that information of our cashier.

Q Who is your cashier?

A Lou Goodman.

Q And what did he tell you?

A He told me that all funds to accomplish the closing were there in good form.

Q Did you ask him how he knew that?

A No, I didn't ask him how he knew that.

Q Mr. Drucker, I show you what has been received in evidence as Plaintiff's Exhibit 10.

Have you ever seen that document before?

A Yes, I have.

Q What is it?

A It appears to be a bank statement from American Bank & Trust. The name on the account is Commonwealth Chemical Securities Subscription Proceeds Beneficial Labs, Inc.

It is a March -- it appears to be a March statement, 1972.

Q March of what -- what day in March does the statement end?

A The ending date on the statement is 3/24 -- the date of the statement is 3/24/72.

Q What period of time does the statement cover?

A It relates to February 29th through March 24th.

Q Looking at that document, Mr. Drucker, can you tell if there ever was $113,000 deposited in that account?

MR. DEVINE: I object to the witness being asked about this document.

THE COURT: Overruled.

A It would appear from the statement that there was never $113,000 in this statement.

Q Thank you.

Mr. Drucker, do you recall how Commonwealth

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paid Beneficial for the units it allegedly sold?

A They gave them two checks in the amount of approximately $94,000.

Q Mr. Drucker, I now show you what has been received in evidence as Plaintiff's Exhibit 9.

Have you ever seen those documents before?

A They appear to be photostats and I do recall seeing them before.

Q Those are two checks that were issued at the closing?

A I believe these were the two closing checks, yes.

Q They are not certified, are they, Mr. Drucker?

A They are not certified.

Q Do you recall why they weren't certified?

A I don't think any of us felt that we had to which is why they were not.

Q Why is that? Weren't you dealing with the public's money?

A I don't see that that follows at all.

Q Did you receive the monies from David Massad concerning the 8,000 shares that were DVP'd to Boston prior to March 10, 1972?

A I'm having trouble with the question in terms of --

Q Tell us why you are having trouble.

A My problem with the question is that --

Q Did you or did you not receive the monies, approximately $21,000, from the Wooster County National Bank prior to March 10, 1972?

A No, I didn't receive it prior to March 10, I'm sorry.

Q Dod Commonwealth receive it?

A It didn't receive it as of March 10, 1972?

A Our records reflect --

Q Did you receive it?

A Did Commonwealth receive it? On its books and records it reflects the receipt of the money for that purchase.

Q Did the firm receive it? Do you know if it received it? Did you ever see the check?

A No, I never saw the check, sir.

Q Isn't it a fact, Mr. Drucker, that sometime after March 10, 1972, the same units had to be DVP'd back to the bank in Massachusetts because the bank didn't know the trade when they were first perceived?

THE COURT: Try it again.

MR. BENOWITZ: Yes, sir.

THE COURT: It is awfully hard to judge the

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demeanor of the witness, Mr. Benowitz, unless you put clear questions to him.

MR. BENOWITZ: Yes, your Honor.

Q How many times were the 8,000 units DVP'd to Boston?

A Twice.

Q And why was that?

A The first time they were shipped up by the bank -- by the American Bank, the Wooster Bank had a problem on its instructions from Massad. They were then delivered back to New York and the same day they were delivered back to New York the correction or clarification on the instruction was made and they went right back up and I believe on the 16th the bank received them for the second time, acknowledged them and received them.

Q And that was the date they were paid on, right?

A You know, I believe so, but I can't confirm the bank's records.

Q Thank you.

And you said the 16th, you mean March 16, 1972?

A Yes.

Q That would be six days after the closing, isn't that correct?

A That is correct.

Q How many converstaions did you have with Mr. Caccesse concerning the purchase by the Vanguard Fund of 8,000 shares of Beneficial Labs?

A I would like to be responsive, but your question is wrong again, Mr. Benowitz. The Vanguard Funds --

Q The New York Hedge Funds. I will withdraw the question and state it again.

How many conversations did you have with Mr. Caccesse, the trader, at A.C. Kluger, concerning the purchase by the New York Hedge Fund at that time of the trade called the Berkley Dean Special Fund of 8,000 shares of Beneficial Labs?

A I had anywhere between two and four conversations on that day with Mr. Caccesse.

Q Do you recall the time of day of your first conversation?

A I believe it was between 10:00 or 10:30 in the morning, something in that area.

Q And do you recall the time of your second conversation?

A I believe it was early afternoon, but I don't recall the exact time.

Q You say you had two conversations or three

conversations?

A I think I had -- I think I may have had four with them.

Q Did you tell Vincent Caccesse in conversations relating to that transaction of the purchase of 8,000 shares of Beneficial Labs by the Vanguard Fund, that there was a rule which prohibited you from transacting this trade, you at Commonwealth?

A I think that was the part of the substance of the fourth conversation that I had with Caccesse relating to that general subject matter.

Q The fourth conversation. Are you saying that this conversation was after the trade had been consummated?

A I believe it was.

Q You believe or do you know?

A I can only give you my best recollection, Mr. Benowitz.

Q Well, I appreciate that as long as it is only a best recollection and it is not -- it is a belief, is that it?

A It is a belief.

Q What do you base that belief on?

A My recollection of that day and the other conversations that I had and the fact that I was very busy

and I believe at the end of the day I spoke to Mr. Caccesse and we had discussion which included that general subject matter.

Q Do you recall the substance of the conversation which related to this rule?

A I think Vinny had asked me why Commonwealth didn't sell the shares directly to the funds and execute the order directly and I related to Vinny that it was my impression based on discussions that I had with counsel that the fund could not buy directly from Commonwealth and had to buy from a marketmaker.

Q Which, if any attorney of the funds at that time did you consult prior to executing this trade?

A I already testified. Mr. Delesandro.

Q Concerning this trade.

A Oh, I did not discuss with any attorney this particular trade execution.

Q Did Mr. Delesandro ever tell you that the fund could not purchase directly or indirectly from an affiliate or an affiliate of an affiliate of the New York Hedge Fund?

A I don't recall that discussion.

Q Do you recall receiving a letter from Mr. Delesandro to that effect?

A I really don't recall at this point.

Q Could you tell me what specific instructions if any that you gave to Mr. Caccesse concerning the execution of the 8,000 share trade?

A Mr. Caccesse was a marketmaker and I instructed him to get the best execution on the order and I gave him a price limit so that he would not just go wild with the order. Those were my instructions.

Q Did you tell him to execute the order in the market?

A In the marketplace, yes, sir.

Q Isn't it a fact, Mr. Drucker, that Mr. Caccesse called you prior to executing the order and told you that he could not execute the order because he couldn't find 8,000 shares available?

A Mr. Caccesse I believe called me in the early afternoon and said that he had been bidding all day for the stock, had spoken to some of the marketmakers but had not gone to all of them in regards to attempting to purchase the shares.

And I instructed Mr. Caccesse to continue bidding for the shares in an attempt to buy them.

Q Isn't it a fact, Mr. Drucker, that during this conversation whereupon Mr. Caccesse called you and told you he coulnd't locate 8,000 shares that you asked him if he had gone to Commonwealth for the 8,000 shares?

A No, sir. I did not tell him to go to Commonwealth.

Q I didn't ask you if you told him to go to Commonwealth.

I asked you if you asked him whether he had gone to Commonwealth.

A No, sir, I did not ask him if he had gone to Commonwealth.

Q Did you ask him to go to Commonwealth?

A No, sir.

Q Did you ever find out that he did go to Commonwealth in fact and did purchase the 8,000 shares of Beneficial Labs from Commonwealth to execute the order which you had placed with him for 8,000 shares on behalf of the New York Hedge Fund?

A I did subsequently learn of that, sir.

Q When did you learn of that?

A Later in the afternoon.

Q How late in the afternoon? Was it after your fourth conversation with Mr. Caccesse?

A No. It was before the fourth conversation with Mr. Caccesse.

Q Before the fourth conversation?

A Yes.

Q Was it the third conversation, the second conversati-n?

A It had not been executed until after the second, so it would obviously have been after the second. I cannot remember whether it was before the third or after the third.

Q Let's go over the conversation.

In the first conversation you gave Mr. Caccesse instructions to purchase on behalf of the fund, is that

correct?

A That is correct.

Q You gave him specific instructions?

A Yes, sir.

Q Did you tell Mr. Caccesse in that conversation that he would make an eighth of a point on the trade?

A I told him that I would expect him not to make more than an eighth of a point.

Q Did you tell him that if he didn't execute the order you would find somebody else to execute the order?

A He was delighted to take it. I never told him anything. He didn't ask me.

Q What did you say in the next conversation?

A The second conversation that I came back -- Caccesse called to relate his inability so far in the day to consummate the order or fill the order for the fund, just to tell me that, and I inquired of him what he had done and --

Q Did you ask him what marketmakers he had gone to?

A At the time I did but I don't recall the names of the marketmakers that he said.

Q The answer to my question is that you did ask

him what marketmakers he went to?

A Yes.

Q Do you recall what he told you ?

A No.

Q Do you recall how many marketmakers there were in Beneficial Labs at that time?

A I believe there were five or six.

Q Was Commonwealth one of them?

A Commonwealth was one of them. Yes, sir.

Q Do you recall what you spoke to Mr. Caccesse about in the third conversation?

A In the third conversation, I believe Caccesse confirmed the fact that he had purchased the shares and was confirming the purchase by the fund to me of the shares that he had bought.

Q In that conversation, did Mr. Caccesse tell you that he had purchased the shares from Commonwealth?

A I don't recall that he did. I don't believe he did.

Q In which conversation did you tell Mr. Caccesse about the rule?

A Mr. Caccesse, in the fourth conversation which took place late in that day, asked me why Commonwealth did not sell th- shares directly to the fund and execute

the order on behalf of the funds directly.

Q Were all of these conversations over the telephone?

A Yes.

Q How many, if any,of these telephone calls did you initiate?

A The most would have been one out of the four. Well, no. Let me take that back.

Possibly two out of the four.

4a

Q Which two?

A The first two.

Q You say the most. YOu are not positive, are you?

A Well, I know the fourth call Caccesse, I believe, placed to me. I think the -- the first call I know I placed to him.

Q Do you recall what you said to Mr.Caccesse and what he said to you in the fourth conversation?

A I think I have already answered that. Do you want me to do it again?

Q Yes.

A I think in that conversation, Mr. Caccesse asked why Commonwealth does not execute the order directly for the funds.

Q Which if any of the other directors of the Vanguard Fund did you discuss that particular 8000 share purchase with?

A I believe Mr. Kleinman.

Q At what time didyou do that? Was it before the trade was executed?

A Yes.

Q Do you recall what you said to Mr.K leinman or what he said to you?

A I think we had a general discussion on the possibility of purchasing some shares of Beneficial for the Hedge Fund.

Q The question is, do you recall what he said to you and what you said to him?

A Iam going to get to it.

Q Thank you.

A I am sorry.

I suggested to Julius why I thought it would be a good idea. The company was doing well. Julie gave me his views and agreed and we reached a decision to purchase the shares for the fund.

Q What did you tell Mr. Kleinman about Beneficial at that time?

A I don't recall, you know, what I told him.

Q Just that the company was doing well?

A I just recall vaguely that we had a discussion in generalities. I don't know whether we got into specifics. It was years ago and I just don't recall that conversation.

Q Do you recall if Beneficial was doing well on September 19, 1972?

A Yes, I believe they were doing well.

Q What do you mean by that?

A You asked me for an opinion and I gave you an opinion, sir.

Q What do you mean by they were doing well?

A They had made some acquisitions, they got a very aggressive go-getter to join the company. There appeared to be substantial sales and profits on the horizon and I was very excited.

Q On the horizon, is that correct?

A Sure.

Q Were there any earnings reported as of September 19, 1972, by Beneficial Labs?

A I don't believe there were earnings reported as of that time.

Q Thank you.

Who is Mr. Joseph Arner?

A Mr.Arner, I believe, is an uncle of Julius Kleinman.

Q Did he have an account at Commonwealth Chemical Securities?

A Yes, he did.

Q Did you speak to Mr. Joseph Arner concerning his opening account at Cabot-Shaw?

A I believe Mr. Kleinman did. I don't think I did sir.

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Q Did you speak to Mr.Kleinman about Mr.Arner opening up an account at Cabot-Shaw?

A Yes,sir.

Q Do you recall when you spoke to Mr. Kleinman about this?

A Prior to his opening the account at Cabot-Shaw.

Q Would it have been approximately on or about January or February of 1973?

A Yes. February of '73, I think that is in the time frame.

Q Did Mr. Wolff tell you thatCabot-Shaw was having net capital problems?

A No, sir.

Q Did Mr. Shirwo tell you that they were having net cap l problems?

A No,sir.

Q Did Mr. Reivens tell you that Cabot-Shaw was having net capital problems?

A No, sir.

Q Did any of the three gentlemen ever tell you that Cabot-Shaw was having difficulty with EDI?

A What does that mean, sir, "difficulty with EDI"?

Q They had too much in their account. In their

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trading account.

A They never told, they never made the statement that they had too much EDI difficulty in their trading account to me.

Q They never gave you an impression that Cabot-Shaw was having net capital problems with EDI, is that correct?

A No,sir.

MR. DEVINE: Objection to the form.

Q Mr. Drucker, how did you learn about Environmental Devices? When did you first learn about it?

A When?

Q How.

A Jerry Wolff had discussions with Bob Reivens, who was one of our traders, and Bob Reivens brought the subject of EDI as well as several other Cabot-Shaw issues to my attention.

Q What other issues were brought to your attention?

A I think a company called American Cassette and one other one whose name escapes me.

Q Did you ever discuss a swap transaction with Gerald Wolff?

MR. DEVINE: Objection to the form, your Honor.

THE COURT: Overruled. I think the witness

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can understand it.

Q Do you know what a swap transaction is, Mr. Drucker?

A I would have to answer that yes and no, Judge.

There are a number of interpretations which I have heard of it.

Q Did you ever discuss a swap transaction with Gerald Wolff?

A In the sense of exchanging interests --

Q Yes or no. Did you?

THE COURT: We will recess now until 2:30.

(Luncheon recess.)

Tk 1A PM

jwb-76 AFTERNOON SESSION
2:30 P.M.

R O B E R T C. D R U C K E R resumed.

THE CLERK: Sir, I remind you you are still under oath.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION (continued)

BY MR. BENOWITZ:

Q Mr. Drucker, before the recess you had described--you had told the Court that you knew of the term swap transaction, in that regard, Mr.Drucker, isn't it true that in January and February 1973 Cabot-Shaw was having difficulties maintaining the price of EDI?

A I am not aware of that being the case.

Q You were never told that?

A No.

Q Isn't it true, Mr.Drucker, that you, Shirwo and Wolff negotiated a dollar for dollar swap transaction, involvingEDI and Beneficial?

A Once again I would like, if I may, to clarify what swap means to me, because there have been all sorts of connotations about it.

Q With regard to EDI and Beneficial I will allow you to do that.

A All right. Commonwealth did acquire a block

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of dollar for collar value of EDI and did make a sale within a day or two of comparable dollar value of Beneficial Labs common warrants toC abot-Shaw. There were no Beneficials, as I understood them, on my purchase. I don't think I composed or asked for any shares of stock I sold to Mr. Shirwo's firm.

Q Do you recall any transaction leading up to the swap transaction?

A Vaguely.

Q Isn't it true that as part of those negotiations you asked Mr.Wolff and/or Mr. Shirwo if Cabot-Shaw wanted to relieve the pressure on EDI by selling 10,000 to 12,500 shares of EDI.

A The initiation of the call came fromCabot-Shaw. I didn't voluntarily go there to relieve their pressure.

Q I didn't ask you who negotiated it. I asked you if you recall whosaid that.

A I don't recall saying that I would like to relieve the pressure on EDI.

Q Do you recall if you asked any employee or principal of Cabot-Shaw if they wished to sell ten to 12,500 shares of EDI?

A We did have discussions and when we had fixed a value or an interest in each of the parties that was the

final value that we had agreed upon.

Q Value or number of shares?

A Dollar value. Dollar value.

Q Isn't it true, Mr. Drucker, that in connection with these negotiations you pointed out to Mr. Shirwo and Mr. Wolff that Beneficial was not blue skying in California?

A They did inquire as to its blue sky status and I did tell them that I didn't think it was blue-skied in California.

G That you didn't believe it was blue-skied or in fact it was not blue-skied?

A I didn't think it was. It was my impression that a local broker had blue-skied it.

Q In that connection, isn't it true you told Mr. Wolff and Mr. Shirwo that if they purchased Beneficial for their trading account it would obviate the necessity of blue skying Beneficial in California?

. I didn't tell them it was necessary to obviate the blue skies in California to put it in their trading account.

Q You never told them to buy it for their trading account?

A They did buy it for their trading account. They told me.

Q Did you suggest they do it that way?

A The decision was theirs. No, I didn't suggest they do it that way.

Q In these negotiations leading up to the swap transactions of EDI, and Beneficial, between Cabot-Shaw and Commonwealth Chemical Securities, do you recall conversations regarding the fact that all parties concerned to the swap, Commonwealth and Cabot-Shaw, wanted the transaction to be close to the respective bid prices of each security?

MR. DEVINE: Your H-nor, objection to the form, the use of the word "swap" continuously. There is a problem in the definition of that word.

THE COURT: If the witness understands it in the context in which the question is asked, he may answer.

Q Mr.Drucker, you can answer the question.

A May I say something, your Honor?

THE COURT: Can you answer the question?

THE WITNESS: I am sorry. Would you --

THE COURT: If you don't understand it, I will have it reframed. If you understand it, answer it.

THE WITNESS: Would you please repeat it? I am sorry.

Q Mr. Drucker, do you recall any conversations with regard to the swap transaction concerning the fact

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that the transaction would be executed as close to each respective securities bid price?

A Yes, I do.

Q Do you recall the essence of those discussions?

A We were attempting to pick a method of the respective transactions that would be equitable to both parties. It would have either been the offer, the bid or the -- the bid seemed to be the fairest.

Q By equitable, do you mean so each broker would be spending almost the same amount of dollars as the other brokers?

A No, the purpose, as I understood it, was that each broker was a trading firm and we were a trading firm. In order to buy and sell stock you were supposed to buy it at the bid and sell it at the offering. It was for that reason that the respective bid prices were suggested and agreed upon.

Q As part of these negotiations leading to that swap transactions between Commonwealth and Cabot-Shaw, isn't it a fact that you told Mr. Wolff that you would arrange to have a Mr.Joseph Arner telephone him in order for Mr. Arner to purchase 5000 shares from Environmental Devices?

A I don't believe that is the case. I believe the Arner transaction was weeks later.

Q You believe or do you know?

A From recollection I think it was at a later date. I don't know.

Q But you are not positive?

A No,I am not positive.

Q Isn't it a fact, Mr. Drucker, that Commonwealth Chemical purchased 4500 shares of EDI? Do you recall that?

A I don't recall the number,but it could be in that area.

Q Do you recall that Commonwealth purchased 4500 shares of EDI in return for which Commonwealth sold 2000 Beneficial units to Cabot-Shaw?

A I remember the sale of 2000 or 2100 units. I remember a purchase of approximately 5000 shares of EDI.

Q Isn't it true that the purchase by Commonwealth of 4500 shares of EDI was dependent upon Cabot-Shaw purchasing 2000 Beneficial units?

A We would have taken a position. The exact size I would have taken I can't give you that.

Q But it was dependent, Commonwealth purchasing waz based --

A It was an inductment to take theEDI shares.

Q Thank you. Mr.Drucker, you testified this morning concerning certain trades of theVanguard Fund and

New York Hedge Fund involving Cabot-Shaw, yourself and Mr. Wolff. I would like to first ask you question concerning the New York Hedge Fund transaction.

You testified that you arranged to have the New York Hedge Fund sell 3000 shares of Beneficial common stock to Cabot-Shaw. Isn't it a fact, Mr.Drucker, that Commonwealth Chemical bought back 3000 shares of Beneficial one day later from Cabot-Shaw?

A I don't know if it was a day later. They did buy on an agency basis 3000 shares from them within a short period of time after the Fund sale as agent for Joseph Arner.

Q Isn't it a fact you told Mr. Wolff in connection with this transaction that Commonwealth would find a place for the 3000 shares ifCabot-Shaw would buy them from the Fund?

A I told them we would assist them, but I didn't give them a commitment that I would be obligated to buy those shares.

Q What does it mean when you told him you would assist him?

A That I would try to help him. If buyers came in we would try to sell the stock. We had retail customers in it, but I had no binding obligation I had to take it.

Q Isn't it a fact Mr. Wolff told you Cabot-Shaw would not buy 3000 shares from the New York Hedge Fund if

you had not arranged to have a purchaser come in to contact Shaw for those same shares?

A Mr. Wolff didn't make the decision to buy them. Mr. Shirwo did.

Q Isn't it a fact thatyou told Mr. Shirwo?

A That I had to buy them? No.

Q Did Mr. Shirwo tell you that you didn't have to buy the 3000 shares of New York Hedge Funds if you didn't attempt to find a place for those 3000 shares within a short period of time?

A I don't recall Mr. Shirwo making such a statement.

Q But you do recall the trade?

A Yes.

Q Mr.Drucker, you testified earlier that in connection with fund transactions you had occasion to speak to attorneys withregard to them or to fund transactions. Can you recall what if any attorney you spoke to concerning the proprietyof the sale by the New York Hedge Fund to Cabot-Shaw just testified to?

A I don't believe I had any discussions with any attorney --

Q Thank you.

A -- about that.

Q Do you recall speaking to Mr. Wolff in or about February of 1973 concerning your desire for Cabot-Shaw to purchase 5000 shares of Environmental Devices from Commonwealth Chemical Securities?

A I don't recall a specific discussion.

Q Do you recall a trade of that nature?

A Iam very vague. I really don't recall it.

Q Perhaps I can refresh your recollection. Do you recall telling Mr. Wolff that if Cabot-Shaw purchased 5000 sharesof EDI from Commonwealth you would -- Commonwealth would in turn try to find a place for those 5000 shares?

A I do remember vaguely, you know, such a discussion

Q Thank you. Do you recall Commonwealth selling 5000 shares of EDI to Cabot-Shaw?

A Commonwealth as principal agent, or in any way, Mr. Benowitz?

Q As principal agent in any --

A As principal agent or in any way.

Q In any way.

A I do remember that transaction vaguely.

Q Do you recall Commonwealth purchasing 5000 shares of EDI back from Cabot-Shaw?

A No, I don't at this time. I am sorry.

Q Do you recall chat 5000 shares EDI transaction

on behalf of the Vanguard firm?

A I have some recollection of that, yes.

Q Do you recall that you asked Mr. Wolff that if Commonwealth -- if Cabot Shaw would purchase 5000 shares of EDI from Commonwealth that the Vanguard Fund would purchase those 5000 shares back from Cabot-Shaw?

A I don't recall coincident conversations relating to that.

Q Do you recall in regard to any trade concerning the Vanguard Fund and Cabot-Shaw telling Mr. Wolff that you had arranged to have Mr. Kleinman call Mr. Wolff concerning the authority to execute the trade on behalf of the Vanguard Fund?

A I don't recall that discussion.

Q Do you recall if you ever asked Mr. Kleinman if he ever called Mr. Wolff concerning the Vanguard transaction with Cabot-Shaw?

A I don't recall asking Mr. Kleinman whether he ever made such a call.

Q Do you recall any transactions whereby the Vanguard Fund either purchased or sold securities to CAbot-Shaw?

A Well, I have acknowledged that I remember the EDI Vanguard Fund trade.

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Q With respect to that trade, Mr. Drucker, what if any attorney did you consult with regard to the propriety of that trade?

A I didn't consult with any attorney on that trade.

Q Thank you. Mr. Drucker, this morning you described the corporate makeup of Commonwealth Chemical Securities as it was, or as it is. You stated that you owned approximately 25 per cent of the outstanding shares, that Mr. Kleinman owned approximately 20 per cent of the out-- excuse me, what per cent?

A 25 per cent, approximately.

Q And then 50 per cent of the outstanding voting shares of Commonwealth Chemical was owned by Federated Equities, is that correct?

A Approximately 50 per cent.

Q Do you know who owns the shares of Federated Equity?

A I believe there are some 9 or 10 shareholders of which Mr Kleinman and I are majority shareholders of Federated Equity.

Q What percentage of outstanding voting stock do you own in Federated Equities?

A I believe one-third.

Q And the same question with regard to Mr.Kleinman

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A The same one-third.

Q Thank you. Do you recall having any discussions with Lou Goodman, or Zoltan Guttman as he is sometimes called, concerning his salary arrangements with Commonwealth Chemical Securities?

A Mr. Kleinman used to discuss it as often as he could.

Q Isn't it a fact as far as his salaries you aranged with him to pick and choose stock to place in accounts which were not in his name and give him the profits from those accounts?

A As additional compensation and as an incentive I did that for Mr. Goodman from time to time.

Q Isn't it a fact, Mr. Drucker, that those accounts were nominee accounts?

MR. DEVINE: Objection, your Honor. This line is irrelevant.

THE COURT: Overruled. I will take it.

Q You may answer the question.

A I am not aware of specifically what account or accounts you are referring to.

Q Do you recall an account by the name of Sylvia Pavel, care of Yitzchok?

A Yes, I do.

Q Do you recall that in connection with Mr. Goodman in any way?

A I do.

Q In what connection do you remember it?

A In relation to the Beneficial offering and in relation to discussions with Mr. Goodman as to his partnership interest in that account.

Q Do you recall an account by the name of Pavel, care of Sara, care of Yitzchok, or --

A Is that not the same account you just referred to?

Q No, it is not, to my knowledge. You can clarify it.

A I can't clarify it. I am sorry.

Q The basic question is, Mr. Drucker, did the books and records of Commonwealth Chemical Securities reflect the fact that Mr. Goodman was being paid out of profits of accounts in which he was not a named Beneficial owner?

MR. DEVINE: Objection to the form, your Honor.

THE COURT: Sustained.

End 1A

Q Did the books and records of Commonwealth Securities reflect the salary arrangement to which you testified?

MR. DEVINE: Objection to the relevance. There is no allegation in this case that the books and records were unclear as to the payroll.

THE COURT: I will take it for what it is worth.

A Would you repeat that again?

Q Do the books and records of Commonwealth Chemical Securities reflect the salary arrangements that you just described that you had with Zoltan Guttman?

A As I understood the arrangement it was not salary. It was an incentive bonus type thing.

Q Whatever, incentive bonus whatever you want to call it.

A They didn't relfect that transaction in that sense.

Q Did you know, Mr. Drucker, that Mr. Goodman purchased the Beneficial units in the Beneficial public offering and place them in the Pavel account?

MR. DEVINE: Objection to the form, your Honor. It assumes facts not in evidence.

MR. BENOWITZ: Your Honor, with respect to --

THE COURT: Overruled.

Q You can answer the question, Mr. Drucker.

A I keep getting lost with the objection. I am sorry.

MR. BENOWITZ: Would the reporter read back the question?

(Question read)

A Yes, I am aware of that.

Q And did you know he purchased those units with his own funds?

A I was not aware that the total funds were his.

Q Did you ever discuss it with him?

A Subsequently, sure.

Q Did Mr. Kleinman know this?

A I don't know.

MR. DEVINE: Objection to the form, your Honor.

THE COURT: If you know.

A I don't know, sir.

Q Did Mr. Kleinman, if you know, know of the salary arrangements or bonus consideration arrangements that you and Mr. Guttman had?

A I don't know if he knew.

Q You never discussed it with him?

A No. No, sir.

Q Isn't it a fact, Mr. Drucker, that Mary Sharpe purchased units in the Beneficial offering in an account of Nellie Pyles?

A Yes.

Q Isn't it a fact that she discussed this purchase of Beneficial units with you?

A She did discuss that.

Q Mr. Drucker, did you give Mary Sharpe the money to buy those securities?

A No, sir.

Q Do you know where she got the money from?

A No, sir.

Q Did Mr. Kleinman know that Miss Sharpe had purchased the Beneficial units and placed them in an account entitled Nellie Pyles?

MR. DEVINE: Objection to the form.

A I don't konw, sir.

THE COURT: He answered.

Q Mr. Drucker, this morning you testified that there were various meetings of the board of directors of the New York Hedge Fund and the Vanguage Fund during 1972 and continuing into 1973.

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Do you recall -- can you state for the Court who were the directors of both those funds?

A Barry Dash, Stanley Smith, Julius Kleinman and myself and at various points, depending upon the exact time, other directors which represented the former --

Q I will give you a time period. Let's talk about from August 1, 1972 until January 1, 1973, who were the directors of those funds?

A The directors -- from August of '73?

Q '2.

A From August of '72, the directors of the Vanguard Fund would have been Barry Dash, Stanley Smith, Julius Kleinman and myself.

In November of 1973 --

Q I didn't ask you about November of 1973.

A Well, I am trying to give you information to finish your question, Mr. Benowitz.

Q My question is finished, I thank you.

A You asked me a question about the Hedge Funds.

Q I asked you who were the directors during this specific period of time?

THE COURT: Let him answer.

A To both funds, sir, that was your question.

THE COURT: Let him answer. Go ahead.

A When we took over the Hedge Funds there were directors from the Berkley Dean Funds that remaind on pending a shareholders' meeting. I don't know the names of the two or three other directors that were on the Hedge Funds until the shareholders' meeting to ratify DK & B.

Q As of August 1972 who were the directors of the New York Hedge Fund?

A I honestly couldn't tell you.

Q Isn't it a fact that it was you, Mr. Kleinman, Mr. Dash and Mr. Smith?

A I don't know, sir.

Q You don't recall?

A No, I don't recall, sir.

Q As of August of 1972, isn't it a fact that you, Mr. Kleinman, Mr. Dash and Mr. Smith were the directors of the Vanguard Fund?

A I believe that is correct

Q How did you meet -- come to meet Mr. Dash and Mr. Smith? Take one at a time; Mr. Dash.

A Dr. Dash and I have known each other since he was a professor at college where I attended Columbia University from 1957 on through the present.

Stanley Smith is or was a good friend of Manny Brown and Jules Kleinman and I don't know how their relationship developed.

Q Is Mr. Smith a professor and Dash something else? Do you have that right?

A Dr. Dash was a professor. He is now employed by a large drug company.

Stanley Smith also was and I believe still is a professor of engineering.

Q Do you recall how Dr. Dash became a director of the New York Hedge Fund?

A I believe I asked him if he would have an interest in becoming a director and he said yes.

Q And do you recall how he became a director of the Vanguard Fund?

A In the same manner, my request.

Q What expertise did Dr. Dash have as far as you knew at the time to qualify him as a director to either of the funds?

MR. DEVINE: Objection, your Honor, unless there is some qualification necessary for that position.

THE COURT: I will take it. It may be relevant. Go ahead.

A At what point in time?

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Q At the point in time that you asked him to become a director.

A He was a responsible business person, a Ph.d. from one university -- I didn't know which one at this point in time -- as far as I knew he was honest, he was bright, intelligent.

Q Had he ever been employed in the securities industry?

A I don't believe so.

Q Did you ask him at that time?

A No, I don't think I asked him at that time.

Q Do you recall what he was a professor of at that time that he was your professor?

A I believe pharmacology or pharmaceutical sciences or something.

Q You mentioned that Mr. Smith is a professor. Whatis his field of expertise, if you know?

A I believe a professor of engineering at Smith College, something like that.

Q Has Mr. Smith, to your knowledge, ever been employed in the brokerage industry?

A Not to my knowledge.

MR. DEVINE: Your Honor, I object to this line. I think all of the directors of large mutual funds

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in the country who are not in the securities industry would object to any suggestion by the SEC that you must be in the securities industry to be a director of a mutual fund.

THE COURT: I don't know if these questions carry with them any such suggestion. I will allow it.

Q From August 7, 1972 until December -- through November of 1972, how many directors meetings did the Vanguard Fund have?

A Including phone meetings?

Q Physical meetings where all four directors were together.

A I can't recall.

Q Was it more than one?

A I don't recall, sir.

Q How many meetings of the board of directors were there from August 7th of 1972 to November of 1972 of the Vanguard Fund where all directors were present at one place?

A I could not say. I don't recall.

Q Was it more than one?

A I don't recall, sir.

Q Prior to December of 1972, did you ever tell Mr. Smith of the various transactions that the New York Hedge Fund and the Vanguard Fund had consummated in the

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Beneficial securities?

A I don't recall specific discussions.

Q And prior to December of 1972 did you have any discussions or inform Dr. Dash of the transactions in the Beneficial securities of both the Vanguard Fund and the New York Hedge Fund that were consummated?

A I don't recall any specific discussion.

Q Prior to December of 1972, Mr. Drucker, did you inform Mr. Smith that Commonwealth Chemical Securities was the underwriter for Beneficial Labs public offering?

A I believe that I sent Dr. Smith a prospectus -- rather than an offering circular during the period of the offering, but I don't recall a specific discussion eminating from that.

Q You believe; does that mean that you are not absolutely sure?

A I'm reasonable sure. My best recollection is that I sent him an offering circular.

Q Do you recall if you sent the offering circular to him personally? Did you put it in an envelope and mail it?

A Yes.

Q You remember doing that personally?

A I recall that, yes.

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Q Did you do the same for Dr. Dash?

A I not only did that for Dr. Dash, but he and I discussed Beneficial Labs since he had some rememberance of Mr. and Mrs. Feldman.

Q I don't understand that response.

A Well, when I used to drive in to school with Dr. Dash on occasions my sister, who is Mr. Feldman's wife, you know, would join us in the car for the ride into the City. We all worked and went to school in the same general area and he is aware of who John Feldman was in terms of being my brother-in-law.

Q Was Mr. Smith aware of that?

A I don't know, sir.

Q Was either Mr. Smith or Dr. Dash aware of the facts that from March 10th 1972 through December of 1972 Commonwealth Chemical Securities were the marketmaker in the Beneficial Labs securities, as far as you know?

A I have no way of knowing, no.

Q Isn't it a fact, Mr. Drucker, that during that same period of time from March 10th of 1972 through at least November of 1972 Commonwealth Chemical Securities was receiving a $850 monthly fee from Beneficial Labs?

MR. DEVINE: I object, your Honor. It was asked and answered this morning.

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MR. BENOWITZ: I will withdraw the question, your Honor.

Q Did you ever tell Dr. Smith and Mr. Dash that Commonwealth Chemical Securities was receiving an $850 a month fee from Beneficial Labs?

A No, I don't recall any such discussion.

Q Mr. Drucker, when did you first hear of Beneficial Labs?

A When it was in its formation stages, approximately four years ago.

Q And how did you come to hear of this?

A I had discussions with John Feldman relating to its formation.

Q Did you participate in the founding of the company, Mr. Drucker?

A In the sense of being involved in those discussions I would probably say yes.

Q At or about the time the company was founded, did you arrange for private investors to put money in the company?

A A number of my friends, a number of Mr. Brown's friends, a number of other people did put money in.

Q Did you help to prepare Beneficial new releases

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describing company developments after it became public?

A I did review them and go over them and read them at that time.

Q Did you distribute or help to distribute these releases?

A I did send some copies of it to marketmakers.

Q How long have you known John Feldman, Mr. Drucker?

A Fifteen, twenty years maybe.

Q Are you related to John Feldman?

A I am.

Q During the time that Feldman was president of the company, did you assist him in running company affairs?

A He ran the company.

Q Did you assist him?

A As an advisor I gave him my opinion and suggestions.

Q When did you last see John Feldman?

MR. DEVINE: Objection to the relevance, your Honor.

THE COURT: I will allow it. You have --

Q When did you last see John Feldman, Mr. Drucker?

A I think I saw him last night if I am not mistaken.

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Q Did you speak to John Feldman yesterday?

A I saw him, I spoke to him.

Q Did you speak to him on Wednesday, April 30th, 1975?

A I probably did.

Q Did you speak to him by telephone or in person?

A By telephone.

Q Did you ever tell John Feldman not to testify at this trial?

MR. DEVINE: Objection, your Honor.

THE COURT: Overruled.

A I didn't tell John Feldman not to testify at this trial.

Q Did you ever participate in any discussion wherein he, John Feldman, was told not to testify at this trial?

MR. DEVINE: I take it I have a standing objection to this line.

THE COURT: Overruled, whether standing or sitting.

A I was present at a number of discussions with John and his attorney where that subject came up and the final decision was left to John what it was that he would do.

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Q When were these discussions?

A A few weeks ago.

Q A few weeks ago? How recent? When was the last discussion of such kind?

A As to his testifying?

Q When you and his attorney and he were present discussing whether he should testify or not.

A At the last meeting that the three of us which would have been ten days ago maybe.

Q Where did this discussion take place?

A Possibly his attorney's office. I'm not sure exactly where it was.

Q Did John Feldman or Beneficial ever leave $20,000 of the public proceeds of the Beneficial offering on deposit with Commonwealth?

A We did buy certificates of redeposit I believe in that amount for their account sometime a number of years ago.

Q Do you know of your own knowledge whether there was ever public disclosure of this investment of of $20,000 of Beneficial with Commonwealth?

MR. DEVINE: I object to this. There is nothing in this case having anything to do with certificates.

THE COURT: I recall a while back I had to

issue an order because Mr. Feldman didn't appear. Perhaps this relates to that.

Q Would you answer the question, Mr. Drucker?

A I'm sorry?

Q Did there ever come a time Mr. Drucker when the fact that Commonwealth had $20,000 of Beneficial Labs money which Beneficial had gotten from a public offering was disclosed publicly?

A Not to my knowledge.

MR. BENOWITZ: I have no further questions.

THE COURT: We'll take a short recess.

MR. RUBENSTEIN: I have some questions.

(Recess)

CROSS EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. Drucker, my name is J. Mortimer Rubenstein and I am an attorney representing your wife, Dorothy Drucker.

Do you understand that?

A Yes, sir.

Q We never met before other than you saw me yesterday in the courtroom, is that correct, Mr. Drucker?

A We had spoken on the phone.

Q You called me on the phone relative to the

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Q Mr. Drucker, as a matter of fact, the statements on that account came to you and never were sent to Mrs. Drucker, were they?

A They were sent to Mrs. Drucker in the mail along with all other statements.

Q Now, Mr. Drucker, do you know a Milo Mindbiner?

A Never heard of him.

MR. RUBENSTEIN: No further questions.

REDIRECT EXAMINATION

XXXX

BY MR. DEVINE:

THE COURT: Very briefly, now, Mr. Devine.

MR. DEVINE: I am going to try, Judge.

THE COURT: This is redirect. Well, you are going to not try. This case is going to come to an end in about twenty minutes one way or another.

MR. DEVINE: Yes, sir.

Q I would like you to focus on the so-called DVP transaction that involved Mr. Massad in Massachusetts and would you describe for the Court the manner in which the initial DVP arrangement was worked out, mechanically, through the bank for Commonwealth Chemical Securities?

A Whenever we would consummate a trade or a sale with an out-of-town individual, brother or bank, we would deliver the securities to be transmitted to

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American Bank. If we wanted immediate credit, we would ask them for immediate credit and they would immediately credit our account with funds versus the delivery on the other end and we would post that in that manner to our books and records.

Q Did that arrangement pertain with respect to the DVP to Mr. Massad?

A The bank was instructed to do that, give us immediate credit.

Q Did they do so?

A Yes, they did.

Q Did the delivery slips or tickets, whatever the proper terminology is, that accompanied the DVP to Mr. Massad indicate Mr. Massad's name on them?

MR. BENOWITZ: Objection, your Honor.

THE COURT: Overruled.

A The instructions that we gave to the bank to DVP it to the bank for the account of Massad.

Q And was the delivery slip a record kept in the ordinary course of the business of Commonwealth Chemical Securities?

A A delivery receipt would normally be kept.

Q Please look at the page of Plaintiff's Exhibit 14 which pertains to your own account.

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The question is whether you had an opportunity to review the statements made on that page with respect to your account.

A I did review them.

Q And is that page an accurate reflection of the events that occurred having to do with your, all of your transactions in Beneficial Lab securities?

A For the period that is reflected in the statement?

Q For the period to date.

A No. It is not an accurate reflection.

Q In what respects is that schedule inaccurate?

A There are many, many transactions that do not appear in terms of the purchase of securities that would offset sales of securities and there are short positions indicated on the preparation where the entire proceeds of the sale is reflected as a profit in the computation of profits instead of offsetting a purchase against the sale which would greatly reduce the alleged profits that were not made in this account.

Q Well, did you ever make such a short sale?

MR. BENOWITZ: Your Honor, I object to the last question and the last answer in that the document purports to be a document with prescribed limitations and

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that there are certain dates denoted in the document and I believe the document speaks for itself.

If he would like to ask him if the document accurately reflects transactions within the period of time set forth in the document, I would have no objection.

THE COURT: I'll sustain the objection.

Q Mr. Drucker, taking all of your transactions from the beginning of 1972 through the present time in the securities of Beneficial Labs and marking to the market any positions that you currently have in any such securities, have you a net profit or a net loss?

A I have a net loss.

Q What's the approximate amount of that net loss?

A In excess of $25,000, $30,000.

Q I show you Plaintiff's Exhibit 15 and I ask you if in your review of these documents last evening and your marking to the market of --

MR. BENOWITZ: Your Honor, I object to this whole line of questioning. I thought the Court sustained a similar objection earlier this morning on direct. This is not redirect.

THE COURT: It wasn't the same thing. It had to do with other accounts.

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MR. BENOWITZ: I don't even know what accounts they are talking about.

THE COURT: He is talking about his account, I understand it to be.

I surely don't know what accounts he is talking about or for that matter which ones you are talking about.

Go ahead, get it in. Let it all in. Then we'll sift it out. We'll have to get a screen eight miles wide.

Q Mr. Drucker, looking at Plaintiff's Exhibit 15, in your review last evening, when you recomputed the charts which are Plaintiff's Exhibit 14 and marked positions to the market, did you come up with summary totals different from those which are reflected on Plaintiff's Exhibit 15?

A Different by about $500,000.

Q Do you recall specifically account by account the amount of the differences?

A I have prepared an itemized summary relating account by account the differences between this document and mine.

Q I show you Defendants' Exhibit E for identification and I ask you if this refreshes your recollection

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as to the net profits and losses you arrived at in making your review of Plaintiff's Exhibit 14 and 15.

THE COURT: Look, Mr. Devine, you might just as well throw those right out of the window. They are of absolutely no probative value without a foundation.

You haven't got a single document on which they are based that is in evidence here; not a single one. Either lay a foundation on it or quit wasting the Court's time. I told you that this morning. You had the noon hour, a two-hour lunch hour in which to do it.

Lay the foundation. They are no evidentiary value whatever. You may just as well hand him this (indicating an envelope).

Q Please tell the Court what calculations you made based upon Plaintiff's Exhibit 14 and what assumptions you made and what information you used in carrying out your calculations and the results of your calculations.

MR. BENOWITZ: Objection.

THE COURT: He is basing them on your exhibit. They are in evidence.

MR. BENOWITZ: We are not interested in his assumption.

THE COURT: Let's see what they are.

A I spoke to all the marketmakers yesterday that

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were trading the securities to get the highest bid price that was reflected there and within the pink sheets for the last week. It was $1.50. I used that as the bid price for a mark to the market. On all open positions of a long nature that were reflected in the SEC's exhibit, I marked the long position to the market, deducted that from the cost of theposition and it is reflected in the SEC statement and came up with a loss, a depreciation in value.

THE COURT: In other words, you took them transaction for transaction?

THE WITNESS: Yes, sir. Using the FIFO basis that the staff member was using as well.

THE COURT: All right. You marked it to the current market yesterday.

THE WITNESS: Yes, sir.

MR. BENOWITZ: Your Honor, I respectfully object in that it hasn't been established that a loss occurred. It has only been established that securities bought two years ago at escalated prices are not now worth as much as when they were bought but they haven't asked any questions which would establish the incurrence of a loss.

THE COURT: Well, if they haven't established

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it, I would think you would be very happy.

MR. BENOWITZ: I don't understand the relevance of these questions.

Q Would you tell us the results of the calculations, account by account?

A The results for Dorothy Drucker indicate instead of a gross profit of $46,000, a gross profit of $35,000.

For Dorothy Rukasin instead of a gross profit of $4400, a gross profit of $1200.

For Robert Drucker instead of a gross profit of $100,387, a loss of $27,000.

For Robert Drucker, custodian for Susan, former gross profit of $15,750 versus a profit of $2550.

MR. BENOWITZ: Objection, your Honor. The document speaks for itself, if in fact it is admitted in evidence.

THE COURT: Nobody has offered it in evidence. So we'll strike out everything the witness says.

MR. DEVINE: Your Honor, I asked him earlier if he had a recollection and he said he did not.

THE COURT: I am not going to take a chart on somebody's recollection, Mr. Devine. Come on.

lapm

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I asked the witness, your Honor, only if it refreshed his recollection on the amount.

THE WITNESS: May I continue?

THE COURT: All right. I don't believe a word he says, if you want to do it that way. I am the jury here. I am not going to believe something he is reading from a piece of paper.

MR. DEVINE: W ithdrawn.

THE COURT: He says he recalls it, $22.26 from three years ago. What do you think I am, a moron?

Q Mr.Drucker, with respect to the certificates of deposit which Beneficial Labs purchased through the Commonwealth Chemical Securities as you were asked about in the cross-examination, did Commonwealth Chemical Securities make any money on that transaction?

A No,sir.

MR. DEVINE: No further questions.

MR. BENOWITZ: The plaintiff has no further questions of this witness, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. DEVINE: Your Honor, the defense has no further witnesses. I would ask only for consideration of an affidavit which I have marked Defendants' Exhibit F for

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PLAINTIFF'S TRIAL EXHIBIT 12
(PARTIAL) - PROXY STATEMENT
OF HEDGE FUND

NEW YORK HEDGE FUND, INC.

116 John Street
New York, New York 10038

(Approximate date of Mailing: May 27, 1974)

PROXY STATEMENT

INTRODUCTION

New York Hedge Fund, Inc. is an open-end, diversified registered investment company, which was organized under the laws of the State of Maryland for the purpose of seeking capital appreciation by investing in securities of other companies.

At its meeting on July 12, 1973, the Board of Directors of the Fund unanimously approved a proposed Plan of Voluntary Dissolution of the Fund. The Board noted that the total net assets of the Fund had declined to approximately $53,000.* At this level the Fund's expenses were disproportionate to its assets and on such date further operation would not be economically viable for the shareholders. The Fund has not sold its shares since April 1972 and resumption of sales is not planned. Thus, it is not likely that the Fund's assets will increase materially. (See, however, "Certain Transactions".) Accordingly, the Board of Directors believes that the authorization and approval of the Plan of Voluntary Dissolution will be in the best interests of shareholders, and recommends its approval.

SOLICITATION AND REVOCATION OF PROXIES

This proxy statement is furnished in connection with the solicitation of proxies by the directors of New York Hedge Fund, Inc. to be used at the Special Meeting of Shareholders of the Fund, to be held on July 1, 1974, at 1370 Avenue of the Americas, 32nd Floor, New York, New York at 9 A.M. local time.

The shares represented by each proxy received by the Fund in the form solicited by the directors will be voted on the matters listed in the Notice of Meeting as specified by the Shareholder on the proxy, and will be voted for such matter if no such specification is made. A shareholder may give a proxy to someone other than the persons designated in the form of proxy furnished herewith, by crossing out the names appearing on said form and inserting the name of some other person who will be at the meeting. Any proxy may be revoked at any time before its exercise by voting in person, by giving written notice of revocation to the Secretary of the Fund or by filing another proxy with the Secretary at any time prior to the voting of the proxy.

The Fund had 53,295 shares of capital stock outstanding as of May 22, 1974. Only shareholders of record on the date of the meeting will be entitled to be present and to vote at the meeting. Each share of stock is entitled to one vote.

The affirmative vote of in excess of 50% of the outstanding voting securities of the fund is required for the election of directors and for the adoption of Proposal No. 1. With respect to Proposal No. 2, the affirmative vote of a majority of the voting securities represented at the meeting in person or by proxy is required for adoption thereof. For purposes of the Investment Company Act of 1940, a "majority" means the vote (1) of 67% or more of the voting securities present at such meeting, if the holders or more than 50% of

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* After deduction of liquidation reserve: (see "Description of Voluntary Dissolution") and exclusive of the Fund's holdings of Beneficial Laboratories, Inc. common stock and warrants, and its short position in Pelorex Corporation, Inc. common stock. (See "Certain Transactions".)

the outstanding voting securities are present or represented by proxy; or (2) of more than 50% of the outstanding shares, whichever is less.

The attention of shareholders is directed to the Table of Per Share Income and Capital Changes (unaudited) for the years ended January 31, 1969 through January 31, 1974, appearing on page 10, and the audited financial statements of the Fund for the year ended January 31, 1974 appearing at the end of this proxy statement.

DESCRIPTION OF VOLUNTARY DISSOLUTION (PROPOSAL NO. 1)

Under the Plan, Articles of Dissolution will be filed pursuant to Section 76 of the Maryland General Corporation Law. After filing of such Articles of Dissolution, the Fund will wind up its affairs, liquidate, provide for the discharge and the payment of its liabilities, and distribute its assets among the shareholders according to their respective rights.

Upon dissolution of the Fund, Directors of the Fund, pursuant to Maryland law, will become Trustees of the properties and assets of the Fund for the purposes of liquidation. In their capacity as trustees, the directors shall be vested with full title to all the property and assets of the Fund, and shall proceed to collect and distribute the assets of the Fund and to pay off any remaining liabilities of the Fund and take all other steps and do all other acts and things necessary or appropriate to carry into effect the liquidation of the Fund and the winding up of its affairs.

After liquidation has been approved, the Fund intends to apply to the Securities and Exchange Commission for an order determining that the Fund is no longer an Investment Company, as defined in the Investment Company Act of 1940.

As of May 22, 1974, the Fund's assets consisted entirely of cash. On July 12, 1973, the Board of Directors established a reserve of $12,000, which was increased to $15,000 on August 8, 1973, to $23,000 on December 31, 1973 and to $25,500 on February 14, 1974 against expenses of the Fund which it was estimated would be incurred for all expenses of the Fund until its dissolution and liquidation under Maryland law. (See Note 7 to financial statements as of December 31, 1973, and "Right of Redemption" below). In establishing the reserve, the Board took into account the sum of $2,500 which DK&B Management Company, Inc., the Fund's former investment adviser, contributed to the costs of the liquidation (including the costs of this proxy statement). In the event that subsequent to the mailing date of this Proxy Statement unanticipated circumstances indicate the needs for increasing such reserve, the Board of Directors may do so, in which case the value of the assets distributed to stockholders in liquidation would be reduced.

RIGHT OF REDEMPTION

The Fund has not suspended and does not contemplate the suspension of the right of redemption. Shareholders may redeem their shares at any time at net asset value, which will reflect the aforesaid liquidation reserve. To the extend such reserve is not in fact expended, an additional check of the Fund will be issued to shareholders of record as of the date of the shareholders' meeting, upon the completion of dissolution procedures. However, it is not anticipated that any amount of the reserve will remain.

It should be noted that in the event that the Plan of Voluntary Corporate Dissolution is approved, those shareholders voting against the Plan will gain no additional rights under applicable law by so dissenting. If the shareholders reject the proposed liquidation, the value of their shares thereafter will continue to be adversely affected by the high expense ratio currently experienced by the Fund.

The Fund will pay all of the expenses of this solicitation and the liquidation and dissolution of the Fund, including legal, accounting and printing costs. DK&B Management, Inc. has reimbursed the Fund for $2,500 of such expenses.

FEDERAL INCOME TAX CONSEQUENCES TO SHAREHOLDERS

The Fund has been advised by its counsel that for Federal Income Tax purposes, each shareholder of the Fund will recognize gain or loss, measured by the difference between his tax basis in his shares of the Fund and the amount of cash which he receives upon liquidation of the Fund. Such gain or loss will constitute a capital gain or loss if the shares of the Fund held upon liquidation is a capital asset in his hands, and will constitute an ordinary gain or loss if such shares are not considered a capital asset. Shareholders may desire to consult their counsel or other advisers concerning the detailed tax treatment of the final liquidating distribution in their particular case.

Acquisition of Common Stock of Beneficial Laboratories, Inc.

At various dates during August through October, 1972, the Fund acquired 19,600 shares of Beneficial Laboratories, Inc. ("Beneficial") for an aggregate purchase price of $76,562, and warrants to purchase 3,000 shares of its common stock for an aggregate purchase price of $43,125. The initial public offering of Beneficial Units had been made during November, 1971 through February, 1972, when 50,650 Units consisting of one share of its common stock and a warrant to buy one additional share were sold pursuant to an exemption under Regulation A from registration under the Securities Act of 1933. (The foregoing figures take into account a 100% stock dividend which was declared in January, 1973.) The offering was underwritten by Commonwealth Chemical Securities, Inc., of which Robert C. Drucker and Julius S. Kleinman are officers, directors, and principal stockholders. (See "Affiliations of DK&B Management, Inc."). In addition to the Fund's holdings, as of October 31, 1973 Vanguard Fund, Inc., an investment company also advised by DK&B owned 21,000 shares of common stock; Messrs. Drucker and Kleinman owned 7,700 shares of common stock and 6,800 warrants of Beneficial; and Commonwealth Chemical Securities, Inc., an affiliate of DK&B and underwriter for Beneficial owned 2,910 shares and 600 warrants of Beneficial.

Suspension of Trading in Securities of Beneficial Laboratories, Inc.

On March 5, 1973, the Securities and Exchange Commission suspended trading in the common stock and warrants of Beneficial, indicating that questions existed as to the manner in which the initial public offering had taken place, and as to trading patterns in the after market. The Commission also cited questions concerning the financial information published by the Company. The Fund is advised that the Commission is formally investigating these matters. The suspension of trading was continued through October 30, 1973. On March 2, 1973, the last trading day before the suspension, the Fund's Beneficial common stock were valued in its portfolio at an aggregate of $205,800 and the aggregate valuation of the warrants was $58,500, as compared with an aggregate net asset value of the Fund on that date (including the Pelorex short position discussed below) of $329,929. Thus, the Beneficial shares and warrants comprised approximately 71% of the total net asset value of the Fund on that date. See Note 2 to the Financial Statements.

Partial Suspension of Payment on Redemption

In the light of such suspension, the total absence of any public market for its Beneficial shares, and in view of doubt as to the reliability of available information concerning Beneficial, the Board concluded

that it was not reasonably practicable fairly to determine the value of the Beneficial shares. As a result of the foregoing, the Board determined that fairness to all stockholders would require that the Beneficial shares be set aside in the determination of net asset value, that a record of stockholders as of March 5, 1973 be taken, and that each such stockholder be recorded as having a separate, proportionate interest in the Beneficial shares and warrants. Shareholders redeeming their Fund shares before the suspension of trading in Beneficial is lifted would, after such suspension is lifted, receive their proportionate interest in the proceeds of the sale of Beneficial shares allocated to them. The balance of the proceeds of Beneficial shares not allocated to redeemed shareholders would be added back to the assets of the Fund.

The suspension of trading in the Beneficial shares and warrants was terminated on October 31, 1973. From and after that date, however, market quotations in the Beneficial shares and warrants was terminated on October 31, 1973. From and after that date, however, market quotations in the Beneficial shares and warrants were not readily available. On November 8, 1973 the Fund accepted an offer for its entire block of Beneficial shares at a net price of $ .4875 per share and later accepted an offer for its 3,000 Beneficial warrants at a price of $.125 per warrant. Both transactions were consummated on November 27, 1973.

From March 5, 1973 through October 30, 1973, shareholders owning 9,847 shares of the Fund (or 14.6% of the Fund shares outstanding on March 5, 1973) had redeemed. Accordingly, $1,449, the proceeds of 2,861 Beneficial shares and 438 Beneficial warrants (14.6% of the 19,600 shares and 3,000 warrants held by the Fund on October 30, 1973) were distributed to such redeemed shareholders. The balance of the sales price of the Beneficial shares and warrants or $8,481, was added back to the assets of the Fund.

Pelorex Short Position

On January 3, 1973, the Fund effected a short sale transaction in 500 common shares of Pelorex Corporation ("Pelorex shares"), at $93 per share of an aggregate price of $46,475. The said proceeds of this short sale were retained by the selling broker-dealer as collateral pending the close-out of the short sale through delivery by the Fund of 500 Pelorex shares. On January 16, 1973, trading in the Pelorex shares was suspended by the Commission. The effect of such suspension was to prohibit the Fund's acquisition through a broker-dealer of Pelorex shares for the purpose of closing out its short position. The over-the-counter market price of Pelorex shares was $87.00 per share on January 15, 1973, the day before trading was suspended. Since the accounting practice of the Fund required it to carry the $46,475 proceeds of the short sale as an asset, and the current market price of the Pelorex shares as a liability, the difference, or an aggregate of approximately $3,000, was in effect the value of the short position on January 16, 1973 when trading was suspended. This comprised .7% of the Fund's aggregate net asset value of $420,701 on that date.

For considerations similar to those relating to the Beneficial shares and warrants, the Board determined as of June 27, 1973 that it was not reasonably practicable fairly to determine the value of the Pelorex short position. The Board did not initially reach such conclusion because it believed that it could make a good faith estimate of the value of the Pelorex shares. The Board in fact initially estimated the value at $75 per share, and continued in good faith to value the Pelorex short position based upon such estimated value. However, after the suspension of Pelorex trading continued for five months, the Board concluded that it was no longer possible to make a reasonable estimate of the value of Pelorex; and, in addition, the continuation of its suspension rendered it likely that the open market appraisal, when and if trading resumed, would be substantially lower. In mid-June, a public release concerning Pelorex contained information indicating a precarious financial position. This release, and the continued suspension of trading, led the Board to conclude that it was impossible to arrive at a reasonable estimate of the future opening price of Pelorex shares. Accordingly, from and after June 27, 1973, the net asset value of the Fund was computed without regard to the value of the Pelorex short position. However, all shareholders of the Fund who redeemed from and after June 27, 1973 were regarded as having a pro rata share of the profit on the Pelorex transaction, when completed.

Resumption in Trading in Pelorex Corporation and Related Events

Trading in the common stock of Pelorex resumed on September 4, 1973. On that date, the Fund covered its short position in all 500 shares of Pelorex at a price of $26.00 per share, or a total share price of $13,000. Since the proceeds of its short sale, retained by the broker, had been $46,475, the Fund realized a profit of $33,475 on the completed Pelorex transaction. As of the close of the business on September 4, 1973, nineteen (19) shareholders had redeemed. The amount of the Pelorex proceeds allocated and paid these shareholders was $2,955.42.

Since the procedures followed by the Fund in eliminating the Beneficial shares and warrants and the Pelorex short position from its net asset value for the periods indicated, in effect partially suspended the payment upon redemption of Fund shares, the Fund applied for an Order by the Securities and Exchange Commission pursuant to Section 22(e) of the Investment Company Act of 1940, permitting the Fund to follow such procedure. The Fund believes that its application is meritorious, but there can be no assurance that it will be granted.

Contingent Claims

In view of the prior suspension of trading in the shares of Beneficial, the Board of Directors has considered whether violations of the Federal securities laws may have occurred in the manner in which the initial public offering of Beneficial was conducted and the purchase by the Fund of Beneficial shares. Messrs. Drucker and Kleinman have advised the Board of Directors that they are not aware of any violations of law in connection with the purchase of Beneficial shares by the Fund, nor of any improprieties by Commonwealth Chemical Securities, Inc. in the public offering of Beneficial shares and warrants and trading transactions thereafter. However, on May 8, 1974, the Securities and Exchange Commission filed a civil complaint entitled *Securities and Exchange Commission* v. *Commonwealth Chemical Securities, Inc., et al* in the United States District Court for the Southern District of New York, in which it is alleged that Commonwealth, DK&B, Robert Drucker, Julius Kleinman and certain other parties committed various violations of the federal securities laws in connection with the public offering and after-market trading in Beneficial shares and warrants. As respects the Fund, the complaint alleges in substance that such defendants engaged in fraudulent and manipulative practices which caused an artificial rise in the price of the Beneficial shares and warrants, after which the said defendants caused the Fund to purchase such shares and warrants at artificially inflated prices. The complaint seeks various forms of injunctive relief against the defendants, requests the court to require the defendants to disgorge all profits which inured to them as a result of their alleged illegal activities, and further requests the court to appoint an independent trustee for the purpose of collecting such disgorged profits and applying them to restitution to the Fund and other entities or persons who suffered financial losses as a result of such activities. The Fund has notified Insurance Company of North America of a potential claim under the $50,000 fidelity bond issued to the Fund by such Company. In addition, the Fund will preserve whatever remedies it may have in this regard. Whether the Fund institutes a separate action against DK&B and Messrs. Drucker and Kleinman will depend upon several factors, including developments in the aforementioned suit by the Securities and Exchange Commission, the estimated costs of litigation, the relative chance of success if litigation commenced and the estimated financial ability of potential defendants to pay any judgment obtained. Maryland law permits the directors acting as trustees in liquidation, to institute or continue such litigation. There is no assurance that the Fund would be successful in the event any such litigation is commenced. In the event of any recovery by the Fund, either under the aforesaid bond or pursuant to litigation or settlement with any party, the net proceeds thereof would be distributed in cash directly to the Fund's stockholders who were of record on March 5, 1973, (the date of the aforesaid partial suspension of payment on redemption) in proportion to their shareholdings on that date. Payments would be to all stockholders of record on March 5, 1973 regardless of whether they had subsequently redeemed their shares.

Of the liquidation reserve described under "The Proposed Reorganization" $2,000 has been allocated to possible legal fees which may be incurred in connection with the pursuit of such claims. The directors deemed this provision necessary in view of the fact that if subsequent events indicate that the Fund has legally enforceable claims, the potential size of such claims might justify the expense of litigation to enforce them.

ELECTION OF DIRECTORS

It is proposed to elect a Board of Directors of two members to hold office for terms expiring at the earlier of (1) the next Annual or Special Meeting of Shareholders called for the purpose of electing directors; or (2) the completion of the dissolution of the Fund. The persons named in the accompanying form of proxy intend to vote such proxy for the election of the persons listed below unless shareholders specifically indicate on their proxy that they desire to withhold authority to vote for election to office. Management does not contemplate that either nominee will be unable to serve as a director but if for any reason that should occur prior to the meeting, the proxy holders reserve the right to substitute another person or persons of their choice as nominee or nominees in his or their place.

Dr. Barry Dash
Whitehall Laboratories, Inc.
685 Third Avenue
New York, New York 10017

Director of the Fund since July 1972. Secretary since January 7, 1974. Assistant Vice President, Marketing and Director of Product Development, Whitehall Laboratories, Inc.; Formerly Director, Neuro-Data, Inc.

Dr. Stanley H. Smith
Stevens Institute of Technology
E.E. Department
Castle Point Station
Hoboken, New Jersey 07070

Director of the Fund since July, 1972. President and Treasurer since January 7, 1974. Associate Professor, Stevens Institute of Technology.

Robert C. Drucker was President and Treasurer of the Fund from March 17, 1972 to January 4, 1974 and was Chairman of the Board from March 22, 1972 to March 17, 1973. Mr. Drucker is Vice President and Director, Commonwealth Chemical Securities, Inc.; President, Treasurer, Chairman of the Board, Federated Equity Corporation, DK&B Management, Inc. and Federal Equity Sales, Inc.; a Director of Neuro-Data, Inc.; and was a Director of Computing Corporation International, Inc. until February, 1972. He was formerly a Registered Representative and Analyst for First Hanover Corporation.

Julius S. Kleinman was Vice President and Secretary of the Fund from March 17, 1972 to January 4, 1974 and was a director of the Fund from March 22, 1972 to March 17, 1973. He is Chairman of the Board, President and Treasurer, Commonwealth Chemical Securities, Inc. and Vice President, Secretary and Director, Federated Equity Corporation, DK&B Management, Inc. and Federal Equity Sales, Inc. He was formerly President, Kleinman Realty Company and Vice President, Aladdin Realty, Inc.

Officers and directors do not own any shares of the Fund. See "Affiliations of DK&B Management, Inc."

INVESTMENT ADVISOR

Pursuant to an agreement dated October 24, 1972, DK&B Management Corporation ("DK&B") provided the Fund with such office space, equipment and investment research, advice and supervision as the Board of Directors deemed necessary for the proper investment and administration of the Fund's portfolio. DK&B was required to develop an investment program and, subject to the Board's supervision, determine what securities should be purchased or sold and what portion of the Fund's assets shall be held uninvested. DK&B was further required to furnish, at its own expense, all necessary office space, equipment and officers for managing the Fund's affairs, and to pay the compensation of all of its officers and "interested" directors of the Fund, (as that term is defined in the Investment Company Act of 1940).

DK&B was not required to pay any of the following expenses incurred by the Fund: custodial expenses; shareholders accounting expenses; membership dues in the Investment Company Institute or any similar organizations; transfer agency expenses; costs of printing and mailing stock certificates, prospectuses, reports and notices; interest on borrowed money; brokerage commissions; taxes and fees payable to Federal, State and other governmental agencies; salaries of clerical personnel; fees of directors not affiliated with DK&B; auditing and administrative expenses; legal expenses; or other expenses not especifically assumed by DK&B and properly payable by the Fund.

The agreement provided for its continuation from year to year after an initial one year term, but only so long as such continuance was specifically approved annually by a vote of a majority of the Fund's directors who were not parties to the agreement or "interested persons" of any such party as such term is defined in the Act, cast in person at a meeting called for the purpose of voting on such approval and either (a) the vote of a majority of the Fund's outstanding securities or (b) the vote of a majority of the entire Board of Directors.

The agreement was terminable by the Fund on 60 days' notice and by DK&B on 90 days' notice without payment of any penalty, provided that such termination by the Fund was required to be approved by its Board of Directors or by a vote of a majority of its outstanding voting securities. The agreement was automatically terminable upon its assignment.

As compensation for its services, DK&B received from the Fund a management fee equal to 0.75% per year of the average daily net asset value of the Fund, payable monthly on the last day of each month.

Notwithstanding the foregoing, during any fiscal year if the Fund's total net assets reached or exceeded the level of $3,000,000, and only so long as they were at or above such level, and if the sum of the fee to be paid to DK&B by the Fund and the expenses paid or payable by the Fund during such fiscal year (exclusive of interest on borrowed money, taxes and brokerage commissions), exceeded the sum of 1½% of the Fund's average annual net assets, DK&B would have been required to pay such excess amount to the Fund, but only to the extent of any fee earned by DK&B pursuant to the agreement in any fiscal year. The Fund's assets, however, have never been as high as $3,000,000. DK&B earned fees of $939 for the fiscal year ended January 31, 1973 and $490 for the fiscal year ended January 31, 1974.

On March 17, 1973, DK&B notified the Board of its intention to resign, but agreed to continue for a reasonable time as advisor until a replacement could be found. On June 22, 1973, DK&B formally gave 90 days' notice of its intention to terminate on September 22, 1973, and on such date the agreement terminated. DK&B will continue to cooperate with the Fund in order to facilitate its liquidation and the winding up of its affairs. The Fund reimbursed DK&B from September 22, 1973 through October 31, 1973 for its costs of providing clerical and administrative services; from and after November 1, 1973, such services have been provided by DK&B at no cost to the Fund. Since the Fund's assets currently consist only of cash and no further investments are contemplated, the Directors have concluded that the services of an investment advisor may be dispensed with pending the shareholders meeting.

AFFILIATIONS OF DK&B MANAGEMENT, INC.

The principal officers and directors of DK&B are Robert C. Drucker and Julius S. Kleinman. Mr. Drucker serves as Chairman of the Board, President and Treasurer; Mr. Kleinman serves as Vice President, Secretary and Director. During the time that DK&B was the Fund's investment adviser, Mr. Drucker, subject to supervision by the Board of Directors, was principally responsible for investment decisions.

DK&B is a wholly-owned subsidiary of Federated Equity Corporation, a holding company whose business is to provide various financial services to the public. Messrs. Drucker and Kleinman own 66% of the outstanding voting securities issued by Federated Equity Corporation and may be deemed to be controlling persons of Federated Equity Corporation and DK&B Management, Inc. Messrs. Drucker and Kleinman also own 52% of the voting securities of Commonwealth Chemical Securities, Inc., the balance of whose securities are owned by Federated Equity Corporation.

Prior Advisory Agreement

Prior to July 12, 1972, the Fund's investment advisor was Berkley Dean & Company, Inc. under an investment advisory agreement dated December 14, 1971. Pursuant to such agreement, the Fund paid an annual management fee, in quarterly installments, of 1.2% of average net assets up to $20,000,000, with a lower fee applicable to higher asset levels. The Fund's assets never attained the $20,000,000 level. The agreement was terminated by mutual consent on July 12, 1972, whereupon DK&B became the Fund's adviser. From that date until October 24, 1972, when the DK&B agreement previously described was approved by the Fund's shareholders, DK&B served without fee and furnished office space without charge, and the Fund paid all of its other expenses. DK&B did not charge any costs to the Fund during such period.

RATIFICATION OF SELECTION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS (PROPOSAL NO. 2)

The Investment Company Act of 1940 requires the selection of an independent certified public accountant to be ratified by the shareholders of the Fund. The Board of Directors has selected Bruell, Keller & Randall as its independent certified public accountants of the Fund for the year ending January 31, 1974. Such accounting firm has no financial interest, direct or indirect, in the Fund. The employment of such accounting firm may be terminated without any penalty by a vote of the holders of a majority of the outstanding voting shares at any meeting called for that purpose.

SURRENDER OF CERTIFICATES UPON DISSOLUTION

Prior and subsequent to the meeting, shareholders may continue to redeem their shares. See page 3, above.

In the event Proposal No. 1 is adopted at the meeting, Maryland law will require the Fund to give notice to any known creditor of the Fund. Twenty days after the giving of such notice, the Fund will be authorized to file articles of dissolution with the State Department of Assessments and Taxation of Maryland. Such filing must be accompanied by tax clearance certificates from the State Department of Assesments and Taxation, the State Comptroller and the Treasurer of Baltimore County. Processing of the issuance of such tax clearance certificates may be delayed in any of such offices, and in such event, such twenty day period may be extended.

Immediately after the acceptance for filing of the Fund's articles of dissolution, the Fund will mail a notice of such dissolution to shareholders who have not theretofore redeemed their shares. Shareholders

PLAINTIFF'S TRIAL EXHIBIT 12 (PARTIAL-
PROXY STATEMENT OF VANGUARD FUND

VANGUARD FUND, INC.
116 John Street
New York, New York 10038
(212) 349-5460

Approximate Date of Mailing—May 13, 1974

PROXY STATEMENT

For Special in lieu of Annual Meeting of Stockholders to be Held on June 11, 1974

GENERAL

This Proxy Statement is furnished to the stockholders of Vanguard Fund, Inc. ("Vanguard") in connection with the solicitation by the directors of proxies to be used at the Special in lieu of Annual Meeting of Stockholders, or any adjournment thereof, called by the directors of Vanguard principally for the purpose of voting to approve or disapprove the Plan and Agreement of Reorganization (the "Plan") with Pilgrim Fund Inc. ("Pilgrim"), a Maryland corporation, whereby substantially all of the assets of Vanguard will be transferred to Pilgrim in exchange for shares of Pilgrim, with such shares being distributed to the stockholders of Vanguard. Approval is also being sought for the ratification of the Board's selection of Bruell, Keller & Randall as Vanguard's independent certified public accountants for the fiscal year ending October 31, 1974. The Special Meeting is to be held on June 11, 1974, at 10:00 A.M., local time, at the offices of Pilgrim Management Corporation, 185 Cross Street, Fort Lee, New Jersey.

Stockholders of record at the close of business on May 3, 1974 are entitled to notice of the meeting, but no stockholder who has redeemed subsequent to such date is entitled to vote the redeemed shares at the meeting. Each share is entitled to one vote and each fractional share is entitled to a proportionate vote.

On May 3, 1974, 351,590 shares of Vanguard were outstanding and held of record by approximately 1700 stockholders. No person owned of record or (to the knowledge of Vanguard) beneficially 10% or more of the outstanding shares of Vanguard at such date.

The affirmative vote of in excess of 50% of the outstanding voting securities of the Fund is required for the approval of the Plan. With respect to the proposal to ratify the selection of Bruell, Keller & Randall as independent certified public accountants, the affirmative vote of a majority of the voting securities represented at the meeting in person or by proxy is required for adoption thereof. For the purposes of the Investment Company Act of 1940, a "majority" means the vote (1) of 67% or more of the voting securities present at such meeting, if the holders of more than 50% of the outstanding securities are present or represented by proxy; or (2) of more than 50% of the outstanding shares, whichever is less.

Proxies will be voted in accordance with the instructions contained therein. If instructions are not given, the proxy will be voted for approval of the Plan and for ratification of Bruell, Keller & Randall as independent certified public accountants.

A stockholder has the power to revoke his proxy at any time before it is voted, by filing with the Secretary of Vanguard a written revocation or duly executed proxy bearing a later date. The proxy will not be voted if the stockholder is present at the meeting and elects to vote in person.

All legal, accounting, printing and other costs in connection with the preparation and filing of this Proxy Statement, the solicitation by management of proxies for use at the meeting and the execution and implementation of the Plan will be borne by Vanguard. DK&B Management, Inc., the former investment adviser of Vanguard, has agreed to pay $7,500 of such costs but, as noted under "Prior Advisory Services to Vanguard" none of such $7,500 has been paid. In addition to solicitation by mail, proxies may be solicited by the officers and directors of Vanguard.

The most recent Prospectus of Pilgrim Fund, Inc. (hereinafter referred to as the "Pilgrim Prospectus") annexed hereto, is an integral part of this proxy statement and is intended to be read in conjunction herewith. Since, if the proposal is adopted, you will become the owner of Pilgrim shares, you are urged to read the Pilgrim Prospectus, which contains complete information concerning Pilgrim, its investment policies and restrictions, its management, various share purchase plans, financial statements and other important information.

Pursuant to an interim agreement approved by the Board of Directors (both members of which are non-"interested" members) and which became effective on July 16, 1973, Pilgrim Management Corporation ("PMC") undertook to furnish administrative and management services to Vanguard. See "Management Services to Vanguard." The interim agreement became effective contemporaneously with the resignation of DK&B Management, Inc. ("DK&B"), Vanguard's former adviser, and was implemented in contemplation of the submission of the reorganization proposal described herein. PMC, which is a wholly-owned subsidiary of Magnavest Corporation (see "Magnavest Group" at page 15), is the adviser to Pilgrim and will continue as its adviser subsequent to the reorganization, pursuant to the investment advisory agreement currently in effect between PMC and Pilgrim.

The rate of management fee paid by Pilgrim on the first $25,000,000 of net assets is higher than that paid by Vanguard to its former investment adviser and that paid by many other investment companies. See "Investment Management Services to Pilgrim". The present officers and directors of Pilgrim will continue in such capacities following the reorganization See "Officers and Directors of Pilgrim."

During the period of interim management by PMC, Vanguard disposed of substantial portions of its portfolio securities held prior to PMC's assumption of management responsibilities, and has made substantial purchases of new securities. Such security dispositions were made in accordance with the investment philosophy of PMC, which considered, among other factors, the investment merits of the securities sold and then current market conditions. PMC has advised Vanguard that such sales were made in the best interests of Vanguard and that the timing of such sales was not related to any impending closing pursuant to the Plan.

If the proposed reorganization is not favorably acted upon by stockholders, the interim agreement with PMC will terminate, and the Board of Directors of Vanguard would be forced to seek other reorganization arrangements, or recommend the liquidation of Vanguard.

VOTING SECURITIES

Vanguard has one class of stock issued and outstanding. As of May 3, 1974 there were 351,590 shares outstanding. As of that date, no stockholder owned more than 10% of Vanguard's outstanding shares. Each share outstanding on the date of the meeting entitles the holder thereof to one vote.

RECOMMENDATION OF THE DIRECTORS

The Board of Directors of Vanguard has recommended approval of the proposed Plan and the resulting distribution of Pilgrim's shares to Vanguard's stockholders. The Board of Directors feels that the personnel of PMC and its experience in the mutual fund industry will benefit Vanguard's stockholders. Additionally, the Board of Directors feels that the investment objectives and policies of both funds are sufficiently similar to provide stockholders of Vanguard with essentially their original objective when purchasing shares of Vanguard.

THE PROPOSED REORGANIZATION
(Proposal No. 1)

On July 12, 1973, the Board of Directors of Vanguard considered and approved a Plan and Agreement of Reorganization (the "Plan") between Vanguard and Pilgrim, and authorized the calling of a Special Meeting of shareholders of Vanguard to consider and vote upon the Plan. (A copy of the Plan is included in this proxy statement as Exhibit "A".)

Under the Plan, Pilgrim will acquire substantially all of the net assets (principally, cash, stocks and other investment securities) of Vanguard, in return for a number of shares of Pilgrim's capital stock calculated on the basis of the relative net asset value of Vanguard and Pilgrim at the close of business at the exchange date. Included in the assets to be transferred are certain claims Vanguard may have against DK&B Management Company, Inc., its former investment adviser. If such claims are collected, additional Pilgrim shares will be issued to Vanguard shareholders. See "Vanguard Contingent Claims" on page 5. Vanguard will retain a sufficient cash reserve to meet Vanguard's remaining obligations. See "Calculation of Exchange Ratio." After receipt of the Pilgrim shares in exchange for its assets, Vanguard will distribute such shares to its stockholders. Stockholders of Vanguard will thus become stockholders of Pilgrim.

Vanguard established a reserve of $50,000 on July 12, 1973 in order to meet all of its remaining present and anticipated obligations through the date of its final liquidation and dissolution, including its normal operating expenses and expenses of liquidation and dissolution, and increased such reserve to $74,000 on March 13, 1974. As of March 13, 1974, $46,275 of such reserve had been expended. In the event that subsequent to the mailing date of this Proxy Statement unanticipated circumstances indicate the need for increasing such reserve, the Board of Directors may do so, in which case the value of the assets transferred to Pilgrim and the aggregate number of Pilgrim shares received therefore will be reduced.

In order to effect the Plan, the approval of in excess of 50% of Vanguard's shares outstanding at the date of the meeting is required.

SUMMARY OF THE PLAN

The Plan will be effected by transferring all of the net assets of Vanguard to Pilgrim (exclusive of a cash reserve sufficient to meet Vanguard's remaining obligations) in exchange for shares of Pilgrim's capital stock. Pilgrim's shares will be issued based upon the relative net asset values of the two funds as of the close of business on the exchange date. No sales charge will be paid by Vanguard stockholders in connection with the exchange. The exchange date will be no later than ten business days after the Plan is approved by Vanguard's stockholders. Certain provisions of the Plan are summarized below. Shareholders are urged to review the entire plan included in this proxy statement as Exhibit "A".

Conditions to the obligations of the parties to consummate the Plan include the receipt of certain opinions of counsel to each of the funds, deliverable at the Closing, as to legal matters and the accuracy of various representations and warranties of each fund. The Plan also provides that it may be terminated at any time prior to the exchange date by the mutual consent of the Boards of Directors of the funds.

Immediately after the exchange, Vanguard will cause the shares of Pilgrim's capital stock to be distributed to Vanguard stockholders of record on the exchange date by instructing Pilgrim to record appropriate entries on the stock record books of Pilgrim. As soon as possible thereafter, an appropriate notification will be mailed to each stockholder of Vanguard, informing the stockholder of the number of shares of Pilgrim to which he is entitled and requesting his instructions as to various matters concerning such shares.

Certificates evidencing shares of Pilgrim capital stock will not be mailed to stockholders unless specifically requested. Such Pilgrim shares will be held in a Voluntary Open Account maintained by Pilgrim's Transfer Agent, First Pennsylvania Banking and Trust Company, of Philadelphia, Pennsylvania. Under a Voluntary Open Account, a Pilgrim stockholder may at any time make additional investments in Pilgrim shares, obtain without cost to him a stock certificate for the shares held in the account (except for fractional shares) or redeem any portion of the shares held under such account. See "Voluntary Open Account Program" at page 11 of the Pilgrim Prospectus.

Calculation of Exchange Ratio

The number of shares of Pilgrim capital stock to be issued in exchange for Vanguard's assets will be determined by dividing the aggregate value of the net assets of Vanguard to be transferred, computed in accordance with Section 2 of the Plan as of the close of business on the exchange date, by the net asset value per share of Pilgrim capital stock as of that day. It is not contemplated that Pilgrim will assume any liabilities of Vanguard.

. The Plan provides that adjustments to the aggregate value of Vanguard's assets will be made pursuant to a formula which attempts to recognize the potential tax effects of the differences in realized and unrealized taxable capital gains and losses of the combining Funds. As of December 31, 1973 Pilgrim had a tax-loss carry-forward of approximately $145,343 expiring on December 31, 1977. As of October 31, 1973, Vanguard had a tax-loss carry-forward of $1,125,000 of which $38,000 expires on October 31, 1977 and $1,087,000 expires on October 31, 1978. Had this adjustment been made on December 31, 1973, the valuation of Vanguard's net assets, for the purposes of the exchange contemplated by the Plan, would have been increased by $23,905, or $.07 per share. Changes in market values and portfolio transactions before the exchange date could significantly alter the requisite adjustment under this formula. A pro forma computation as of December 31, 1973 illustrating the operation of such formula is annexed to this Proxy Statement as Exhibit "B".

FEDERAL INCOME TAX CONSEQUENCES

In the opinion of Stein & Rosen, counsel to Vanguard, the Plan, when implemented, will constitute a tax-free reorganization within the provisions of the Internal Revenue Code of 1954, as amended, and, for Federal income tax purposes, no gain or loss will be recognized by Vanguard or its shareholders in connection with the transfer of Vanguard's assets and the distribution of Pilgrim shares to the shareholders of Vanguard. Said firm is further of the opinion that the basis of the shares of Pilgrim received by Vanguard's stockholders and the holding period thereof, for Federal income tax purposes, will be the same as the adjusted basis and the holding period applicable to the shares of Vanguard surrendered by such stockholder pursuant to the Plan.

DISSOLUTION OF VANGUARD

Any assets still in Vanguard's possession after the transfer of assets to Pilgrim and after all the Fund's liabilities and expenses of liquidation have been paid, will be paid over to Pilgrim which will credit each stockholder of Vanguard as of the exchange date with an amount equal to the proportion which the shareholdings of each Vanguard stockholder bore to all of the Vanguard shares outstanding as of the Closing Date. The sum so credited will then be applied to the purchase of additional Pilgrim shares or fractions thereof, or, in the case of Vanguard stockholders who have redeemed their Pilgrim shares, paid over to them in cash. See "Vanguard Contingent Claims" on page 5 for a discussion of the distribution of any proceeds of contingent claims which Vanguard may recover after the transaction with Pilgrim has been consummated.

After the distribution of its assets, Vanguard will be dissolved as soon as practicable, pursuant to the Delaware Business Corporation Law. Such dissolution would not prevent Vanguard from pursuing any contingent claims it may have.

RIGHTS OF DISSENTING STOCKHOLDERS

The General Corporation Law of the State of Delaware does not provide for rights of dissenting stockholders in the event the Plan is approved by a majority of the stockholders of Vanguard against the desire of any minority and dissenting stockholder. However, such dissenting stockholders may at any time redeem their shares of Vanguard at the then current net asset value, or they may at any time subsequent to receiving shares of Pilgrim redeem such shares at their then current net asset value.

CERTAIN TRANSACTIONS OF VANGUARD

Acquisition of Common Stock of Beneficial Laboratories, Inc.

At various dates from August through October, 1972, Vanguard acquired 21,000 shares of Beneficial Laboratories, Inc. ("Beneficial") for an aggregate purchase price of $76,562. The initial public offering of Beneficial had been made during November, 1971 through February, 1972 when 101,300 units consisting of one share of common stock and one warrant to buy one additional share were sold pursuant to an exemption under Regulation A from registration under the Securities Act of 1933. The offering was underwritten by Commonwealth Chemical Securities, Inc., an affiliate of DK&B, of which Robert C. Drucker and Julius S. Kleinman are officers, directors, and principal stockholders. In addition to Vanguard's holdings, New York Hedge Fund, Inc., a registered investment company also advised by DK&B acquired 19,600 shares of common stock and 3,000 warrants of Beneficial; Messrs. Drucker and Kleinman owned 7,700 shares of common stock and 6,800 warrants of Beneficial; and Commonwealth Chemical Securities, Inc. owned 2,910 shares and 600 warrants of Beneficial. The foregoing amounts so held take into account a 100% stock dividend declared in January, 1973.

Suspension of Trading in Securities of Beneficial Laboratories, Inc.

On March 5, 1973, the Securities and Exchange Commission ordered suspension of trading in the common stock and warrants of Beneficial, indicating that questions existed as to the manner in which the initial public offering had taken place, and as to trading patterns in the after-market. The Commission also cited questions concerning the financial information published by Beneficial. Vanguard is advised that the Commission is formally investigating these matters. The Commission permitted trading to resume on October 31, 1973. On March 2, 1973, the last trading day before the suspension, Vanguard's Beneficial shares were valued in its portfolio at an aggregate of $210,000. The aggregate net asset value of Vanguard on that date was $1,184,776. Thus, the Beneficial shares comprised approximately 17.7% of the total net asset value of Vanguard on the date trading was suspended in such shares.

Partial Suspension of Payment on Redemption

In the light of such suspension, and in consideration of the total absence of a public market for its Beneficial shares, Vanguard's Board concluded that it was not reasonably practicable for Vanguard fairly to determine the value of the Beneficial shares. As a result, Vanguard's Board determined that fairness to stockholders would require that the Beneficial shares not be included in the determination of net asset value, that a record of stockholders as of March 5, 1973 be taken, and that each such stockholder be deemed to have a proportionate interest in the Beneficial shares. Stockholders redeeming their Fund shares before the suspension of trading in Beneficial shares was lifted would, after the lifting of such suspension, receive their proportionate interest in the proceeds of the sale of Beneficial shares allocated to them. The value of the balance of the Beneficial shares not allocated to redeemed stockholders would be included in the net asset value of the Fund.

Since the effect of the foregoing action by the Board was the partial suspension of payment upon the redemption of Vanguard shares, Vanguard applied for an Order by the Securities and Exchange Commission, pursuant to Section 22(e) of the Investment Company Act of 1940, permitting Vanguard to follow the foregoing procedure. Vanguard believes that its application is meritorious, but there can be no assurance that it will be granted.

The suspension of trading in the Beneficial shares was terminated on October 31, 1973. From and after that date, however, market quotations in Beneficial shares were not readily available. On November 8, 1973, Vanguard accepted a private offer from an unaffiliated party for its entire block of 21,000 Beneficial shares at an aggregate selling price of $10,238, or $.4875 per share. This transaction was consummated on November 27, 1973.

From March 5, 1973 through October 30, 1973, stockholders owning 44,922 shares of Vanguard (or 10.7% of the Vanguard shares outstanding on March 5, 1973) had redeemed. Accordingly, $1,150, the net proceeds of 2,247 Beneficial shares, (10.7% of the 21,000 shares held by Vanguard on October 30, 1973) were distributed to such redeemed stockholders. The balance of the sales price of the Beneficial shares, or $9,088, was added back to the assets of Vanguard.

Vanguard Contingent Claims

In view of the suspension of trading in the shares of Beneficial, the Board of Directors has considered whether violations of the federal securities laws may have occurred in connection with the manner in which the initial public offering of Beneficial shares was conducted and the purchase by Vanguard of Beneficial shares. Messrs. Drucker and Kleinman, principal officers and directors of DK&B, have advised the Board of Directors that they are not aware of any violations of law in connection with the purchase of Beneficial shares by Vanguard, nor of any improprieties by Commonwealth Chemical Securities, Inc. in the public offering of Beneficial shares and trading transactions thereafter.

Vanguard believes that there is a possibility that such violations occurred although it does not yet have firm evidence of any violations. Accordingly, Vanguard has notified Insurance Company of North America of a potential claim under the $100,000 fidelity bond issued to Vanguard by such company.

Pursuant to the Plan, Vanguard will assign its claims against DK&B relating to the Beneficial shares, and certain other claims against DK&B for reimbursement described under "Prior Advisory Services to Vanguard" to Pilgrim. Vanguard will not receive any shares of Pilgrim for such claims and Pilgrim is not obligated to prosecute said claims. However, Vanguard is entitled to prosecute such claims at Vanguard's expense in Pilgrim's name. If any recovery is made on such claims, then (a) as to claims related to the Beneficial shares, Pilgrim will credit Vanguard stockholders of record as of March 5, 1973 with additional Pilgrim shares, in proportion to their stockholdings on said date; and (b) as to reimbursement claims, Pilgrim will credit Vanguard stockholders of record as of the Closing Date with additional Pilgrim shares in proportion to their interests on the Closing Date. In both cases the number of Pilgrim shares credited will be the amount of the recovery, less Pilgrim's costs directly incurred in connection with such recovery, divided by the net asset value of Pilgrim shares on the date issued.

Any determination to pursue any such claim will depend upon the facts of the case, the estimated costs of litigation, the relative chance of success if litigation is commenced and the estimated financial ability of potential defendants to pay any judgment obtained.

Of the liquidation reserve described under "The Proposed Reorganization" $6,000 has been allocated to possible legal fees which may be incurred in connection with the pursuit of such claims. The directors deemed this provision necessary in view of the fact that if subsequent events indicate that such claims are legally enforceable and collectable, the potential size of such claims might justify the expense of litigation to enforce them. There can of course be no assurance that these claims would prevail in the event litigation were commenced, or that the defendants in such litigation would have assets sufficient to satisfy any judgments obtained against them.

ASSETS OF VANGUARD AND PILGRIM

On October 31, 1973 (the end of Vanguard's most recent fiscal year), the total net assets of Vanguard amounted to approximately $518,153 or $1.39 per share and as of December 31, 1973, the total net assets of Vanguard were $419,799 or $1.16 per share. As of December 31, 1973 (the end of Pilgrim's last fiscal year), the total net assets of Pilgrim were $11,449,224 or $6.85 per share.

Reference is made to the combined portfolio of investments of Vanguard and Pilgrim as of December 31, 1973 appearing on the following pages.

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MANAGEMENT SERVICES TO VANGUARD

On June 22, 1973, the Board of Directors of Vanguard, which consisted solely of non-"interested" directors as such term is defined in the Investment Company Act of 1940, unanimously approved and authorized an interim Administrative and Management Service Agreement ("Management Agreement") with PMC. The Agreement, which became effective on July 16, 1973, was not submitted to Vanguard stockholders for approval. The Management Agreement is intended by both Vanguard and PMC to be an interim measure to insure continuity of services to Vanguard. Pursuant to the Management Agreement, PMC renders investment management and administrative services to Vanguard, which includes recommendations as to the purchase and sale of portfolio securities and the furnishing of personnel, office space and facilities and all other administrative services necessary for the operation of Vanguard as an investment company. During the term of the Management Agreement, these services are provided to Vanguard at PMC's cost.

During the period July 16, 1973 through March 31, 1974, the aggregate costs of PMC reimbursed by Vanguard pursuant to the Management Agreement were $2,625. In addition, certain bookkeeping and back-office services are being furnished to Vanguard by Kel-Ken, Inc. at a cost to Vanguard of $875 per month. The agreement with Kel-Ken, Inc. is terminable by Vanguard on seven days' notice. Neither Kel-Ken nor any of its officers, directors or stockholders are affiliated with any of the officers or directors or principal stockholders of Vanguard, Pilgrim, DK&B, or PMC.

The Management Agreement with PMC terminates upon the earlier of:

(a) The consummation of the Plan;

(b) (i) The execution without stockholders' approval of an interim Investment Management Agreement between Vanguard and any other party; (ii) the execution of an Investment Management Agreement after such Agreement has been approved by both the Board of Directors and stockholders of Vanguard; or (iii) thirty (30) days after the rejection by Vanguard stockholders of the Plan.

(c) By Vanguard upon five (5) days' notice to PMC;

(d) By PMC, with cause, on thirty (30) days' notice, or without cause on January 16, 1974, except that such period shall be automatically extended for additional thirty (30) day periods unless either Vanguard or PMC gives notice of termination at the beginning of any such additional thirty (30) day period. The Management Agreement has been automatically extended pursuant to such provision.

In the event the Plan is not approved by stockholders of Vanguard, PMC does not intend to continue to serve pursuant to the Management Agreement for a period of time longer than the minimum time obligations under the Management Agreement.

PRIOR ADVISORY SERVICES TO VANGUARD

Prior to July 16, 1973, investment advisory and management services were provided by DK&B Management, Inc. ("DK&B") pursuant to an agreement dated March 22, 1972 (the "Advisory Agreement"). Under the Advisory Agreement, DK&B furnished Vanguard with research information, advice and supervision, administrative services and office space, and paid the salaries of all officers of Vanguard and all directors who were "interested persons" of Vanguard, as that phrase is defined in the Investment Company Act of 1940. Vanguard assumed and paid all expenses not expressly assumed by DK&B, including but not limited to, fees of directors who were not "interested persons" of Vanguard, brokerage fees, interest, taxes, legal and auditing expenses, custodian and shareholder servicing expenses, reporting expenses and the printing costs of reports and prospectuses sent to shareholders.

The management fee payable to DK&B was at the rate of 0.5% per year of the average daily net asset value of Vanguard computed daily and paid monthly.

The Advisory Agreement was terminable by Vanguard on 60 days' notice, or by DK&B on 90 days' notice. On March 17, 1973, DK&B advised the Board of Directors that it desired to terminate the Advisory Agreement, and the Board agreed that it would be in Vanguard's best interest if the Advisory Agreement were so terminated. At the Board's request, however, DK&B agreed to continue to furnish advisory and management services pursuant to the Advisory Agreement until a suitable successor could be found. The Agreement was terminated, by mutual consent, on July 16, 1973, simultaneously with the effectiveness of the Management Agreement with PMC.

There was no consideration paid by Vanguard to DK&B or any of its officers and directors, or any consideration paid by DK&B, its officers or directors, to Vanguard, in connection with such termination. However, DK&B paid $6,000 to PMC to reimburse PMC for its costs incurred in connection with the implementation of the Plan. See "Expense of Reorganization." DK&B also agreed to reimburse Vanguard for its expenses in connection with the Plan in an amount not exceeding $7,500. To date, DK&B has not complied with this obligation.

The Advisory Agreement provided further that if during any fiscal year the sum of the investment advisory fee and the other expenses of Vanguard (exclusive of interest on borrowed money, taxes and brokerage commissions) exceeded the sum of 1½% of Vanguard's average net assets, DK&B would reim-

burse Vanguard for such excess expenses. On July 16, 1973, the total net reimbursement payable by DK&B pursuant to said formula was $31,398.

On October 1, 1973, Vanguard was formally advised that the financial condition of DK&B would not permit it to satisfy its obligations to Vanguard in such amount. Certain stockholders of DK&B, however, offered to make $15,000 available to DK&B if Vanguard would accept payment of said sum in full satisfaction of its claim against DK&B. Based upon such offer, the Board of Directors determined to value Vanguard's claim against DK&B at $15,000. However, the Board has not accepted the offer of $15,000 and is negotiating with DK&B and its stockholders for a substantially higher settlement. As noted under "Expenses of Reorganization" DK&B has also refused to honor its written commitment to pay $7,500 to Vanguard in order partially to defray the costs of the proposed reorganization. If a satisfactory settlement of both of these claims is not achieved, Vanguard may litigate its claims against DK&B. This would entail additional legal fees to Vanguard. There can be no assurance that DK&B would have sufficient assets with which to satisfy any judgment obtained against it. The net amount of any recovery by Vanguard on this claim will be distributed in additional Pilgrim shares to Vanguard's stockholders of record on the Closing Date, in proportion to their stockholdings on the Closing Date. See "Vanguard Contingent Claims".

Distribution Contract of Vanguard

Vanguard has not offered its shares for sale since February 28, 1973. Prior thereto, Vanguard shares were distributed by Federated Equity Sales, Inc. ("FES") pursuant to a Distribution Agreement dated March 22, 1972. FES is a wholly-owned subsidiary of Federated Equity Corporation. See "Affiliations of DK&B Management, Inc." The Distribution Agreement provided that FES would pay the expenses of preparing, printing and distributing advertising and sales literature used in connection with sales of Vanguard shares, and for all prospectuses used in connection with such sales (except initial type-setting costs). Vanguard paid for the cost of qualifying and maintaining qualification of its shares for sale under the federal securities laws and the securities laws of the various states.

During the period March 22, 1972 through October 31, 1972, and from November 1, 1972 through February 28, 1973, FES received gross distributing commissions of $11,131 and $5,489, respectively, from the sale of Vanguard's shares, of which $9,158 and $4,523 respectively, were reallowed to other dealers.

The Distribution Agreement was terminated on February 28, 1973 by mutual consent, when Vanguard ceased offering its shares.

AFFILIATIONS OF DK&B MANAGEMENT, INC.

The principal officers and directors of DK&B are Robert C. Drucker and Julius S. Kleinman. Mr. Drucker serves as Chairman of the Board, President and Treasurer; Mr. Kleinman serves as Vice President, Secretary and Director. During the time that DK&B was Vanguard's investment adviser, Mr. Drucker, subject to supervision by Vanguard's Board of Directors, was principally responsible for investment decisions.

DK&B is a wholly-owned subsidiary of Federated Equity Corporation, a holding company whose business is to provide various financial services to the public. Federated Equity Sales, Inc. (Vanguard's former distributor) is also a wholly-owned subsidiary of Federated Equity Corporation. Messrs. Drucker and Kleinman own 66% of the outstanding voting securities issued by Federated Equity Corporation and may be deemed to be controlling persons of Federated Equity Corporation, DK&B Management, Inc. and Federated Equity Sales, Inc. Messrs. Drucker and Kleinman also own 52% of the voting securities of Commonwealth Chemical Securities, Inc., the balance of whose securities are owned by Federated Equity Corporation.

INVESTMENT MANAGEMENT SERVICES TO PILGRIM FUND INC.

The advisory fee payable under the PMC Management Agreement with Pilgrim is computed at the rate of 1% annually of the average daily net asset value of Pilgrim, although the rate would decline to ¾ of 1% on assets from $25,000,000 to $100,000,000; ½ of 1% on assets from $100,000,000 to $500,000,000; and 2/5 of 1% on assets over $500,000,000. As of December 31, 1973,, Pilgrim's total net assets were $11,449,224. The rate of management fee charged by PMC on the first $25,000,000 of net assets is higher than the rate of fee previously charged by DK&B and is higher than the rate of fee paid by many other funds. With respect to the reimbursement for excess expenses, the PMC Management Agreement is comparable to the DK&B Management Agreement, calling for reimbursement to Pilgrim of the excess of total expenses (including the management fee but excluding taxes, interest and brokerage commissions) over 1½% of Pilgrim's average net asset value in any fiscal year; however, with respect to net assets exceeding $30,000,000 only, the excess of such expenses over 1% is reimbursed. In other respects, the PMC Management Agreement is similar to the former DK&B Management Agreement. Any expense reimbursement due from PMC is simultaneously offset against management fees due to PMC.

Had PMC been the investment adviser to Vanguard during its entire fiscal year ended October 31, 1973, the gross advisory fee would have been $6,906; had DK&B been the investment adviser during the same period, the gross advisory fee would have been $4,604. However, since the operating expenses of Vanguard plus the advisory fee would in either case have exceeded 1½% of Vanguard's average annual net assets, Vanguard's net operating expenses, after reimbursement of such excess, would have been the same whether DK&B or PMC had been its adviser during the period. See "Investment Manager" at page 5 of the Pilgrim Prospectus.

PRINCIPAL UNDERWRITER AND DISTRIBUTOR OF PILGRIM FUND INC.

The principal underwriter and general distributor of the shares of Pilgrim is Pilgrim Fund Distributors, Inc. ("PFD"), a wholly-owned subsidiary of PMC, with offices at 185 Cross Street, Fort Lee, New Jersey.

During Pilgrim's fiscal year ended December 31, 1973 PFD, as principal underwriter, received sales commissions of $48,272, of which $41,108 was reallowed to dealers. These commissions are not an expense of Pilgrim and have no effect on the net asset value of Pilgrim. PFD pays dealers concessions and its expenses, including the cost of prospectuses and other literature used in connection with the sale of Pilgrim shares, and necessary sales distribution and related expenses. During such fiscal year approximately 48% of the dealers' aggregate concessions were received by William Jennings & Co., Inc., a wholly-owned subsidiary of Magnavest Corporation, as a retail dealer of Pilgrim's shares. (See "Magnavest Group").

For further information concerning PFD and the sale of Pilgrim shares, see "How the Fund Distributes Shares" at page 12 of the Pilgrim Prospectus.

INVESTMENT POLICIES AND OBJECTIVES OF VANGUARD AND PILGRIM

Stockholders of Vanguard should consider the investment objectives and policies of Pilgrim, which are described at page 2 of the Pilgrim Prospectus, since its investment decisions will be governed by such objectives and policies.

Both Vanguard and Pilgrim are diversified open-end investment companies not concentrating their investments in any single industry. The primary investment objective of both Vanguard and Pilgrim is to invest in securities which are believed to offer possibilities for long-term capital appreciation. The portfolio of both Vanguard and Pilgrim primarily contain common stocks and securities convertible into common stock. The production of income is either incidental or secondary to both.

TRADING PRACTICES AND PORTFOLIO TURNOVER OF THE FUNDS

The trading practices of the funds differ. in that Vanguard's investment policy contemplates short-term trading, whereas Pilgrim will normally not engage in short-term trading. However, market and economic conditions may from time to time be such that, in the opinion of Pilgrim's management, short term trading is necessary. As a result, Vanguard's portfolio turnover has been significantly higher than Pilgrim's. In the calendar years ended December 31, 1971, 1972 and 1973, Pilgrim's turnover was 41.5%, 22.8% and 11.3% respectively. During the fiscal years ended October 31 of 1971, 1972 and 1973 Vanguard's turnover was 68.5%, 180.5% and 112.1% respectively. Higher portfolio turnover may occur when economic and market conditions require liquidation of portfolio securities and the purchase of others, consistent with Pilgrim's objectives.

OFFICERS AND DIRECTORS OF VANGUARD FUND, INC.

Directors and officers of Vanguard, their principal occupations and affiliations, and the date each became a director, are shown below. During the fiscal year ended October 31, 1973, only those directors not affiliated with DK&B received directors' fees, in the aggregate of $2,700. As of June 22, 1973, the directors have waived all fees during the pendency of the reorganization.

Dr. Barry Dash
Whitehall Laboratories, Inc.
685 Third Avenue
New York, New York 10017

Director of Vanguard since July 1972; Secretary since January 10, 1974, Assistant Vice President, Marketing and Director of Product Development, Whitehall Laboratories, Inc.; Formerly Director, Neuro-Data, Inc.

PLAINTIFF'S TRIAL EXHIBIT 14 -
PROFIT STATEMENT OF DEFENDANTS

(pp. 371a - 380a)

Dorothy Drucker (Robert Drucker)

(4/3/72 direct Procon 300 wts) * (50 com sha. - Ross Labs/mona Murray)

Date Bot.	Shares	Price	Gross Amt.
Mar 6 1972	2100 w	1/4	525 -
Mar 20 1972	3400 w	1/4	850 -
Jan. 15, 1973	5000 c	20	100000 -

Date Sold	# Shares	Price	Gross Amt.		Profit
May 4 1972	100 w	4 7/16	443 75		443 75
May 8 1972	700 w	4 5/16	3018 75		2943 75
Jan 15 1973	550 c	24 1/2	13475 -	(50 Sold Sht.)	3475 -
Jan 15, 1973	2000 w	20	40000 -		39520 -

USA 234-478
(REV. 6-22-71)

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
1F

FFI-81—6-3-73-10M-6762

ROBERT DEWECKER

*(3/21 Rcvd 80.-)
**(10/19 Recvd 1000sh)
***(n/a - 1450sh)

Date Bgt	# Shares	Price	Gross Amt.
7/19/21	350 C	74	26,150.-
9/14/21	3 4,500 W	8	36,000.-
12/14/21	② 600 C	17 1/2	10,500.-

	Date Sold	# Shares	Price	Gross Amt.		Profit
*	3/20/21	300 C	4 7/8	1,462.50	(Split)	1,387.50
	7/19/21	1,500 C	8 1/2	12,750.-		11,250.-
	9/2/21	1,100 C	8 3/4	9,625.-		4,125.-
	9/24/21	500 C	8 3/4	4,375.-		1,875.-
	9/15/21	② 4,500 W	8	36,000.-		-0-
	10/1/21	100 W	12 3/4	1,275.-	→	1,275.-
**	12/29/21	1,000 W	30 3/4	30,750.-	→	30,750.-
***	1/4/22	1,250 W	36	45,000.-	→	45,000.-
	1/10	×② 600 C	17 1/2	10,500.-		7,500.-
	1/13/22	100 C	20 1/4	2,050.-		-0-
	1/30/22	100 W (new)	10 1/8	1,012.50		1,550.-
	2/21/22	100 C (new)	12 1/2	1,250.-		1,012.50
						2,000.-
						100,387.50

DOROTHY RUKASIN (A/K/A DRUCKER)

St/Stk Recv. - 400 com / 100 pf
Amstar Recv. - 1400 wts

Date Bot.	# Shares	Price	Gross Amt.				Date Sold	# Shares	Price	Gross Amt.			Profit
March 20, 1917	3000 w	1/4	750 -				MAR. 30, 1917	2000 c	6 3/8	1275 -	<Sub. Sale>		1325 -
							" 30, 1917	2000 c	6 3/8	1275 -	<Sub. Sale>		1275 -
							April 7, 1917	500 w	4	2000 -			1875 -
													3475 -

LORI RUKASIN (DOROTHY DRUCKER)

Date Bot.	# Shares	Price	Gross Amt				Date Sold	# Shares	Price	Gross Amt			Profit
mar. 19, 1972	(a) 1000 ut	12 3/8	24,250			(wts → com)	Apr. 7, 1972	300 uts	10 3/4	3,225 -			(a) 25,250
mar. 20, 1972	2000 w	1/4	500 -				Aug. 14, 1972	7000 c	7 1/8	49,875 -			49,375 -
							Oct. 20, 1972	500 uts	30 3/4	15,375 -			(b) 14,875
Nov. 14, 1972	600 c	17 1/2	10,500 -										
Nov. 16, 1972	500 c	17 1/2	8750 -										
Dec. 5, 1972	100 uts	3 1/2	350 -										
Jan. 24, 1973	300 c	24	7200 -										

Robert Drucker o/f Susan (Robert Drucker)

Date Bot.	# shares	Price	Gross Amt.	Date Sold	# shares	Price	Gross Amt.	Profit
3/20/72	1000 W	1/4	250 -	10/31/72	1000 W	1/6	1600 -	1775 -
10/31/72	8000 C	1/8	1400 -					

ROBERT DRUCKER c/f CHERYL

(5/3 Recvd 200 c)

Date Bot.	# Shares	Price	Gross Amt	Date Sold	# Shares	Price	Gross Amt.		Profit
3/20/74	500 u	2 3/8		3/26/74	200 c	5 7/8			
3/20/74	1000 w	1/4	250 -	4/2/74	200 c	7	1400 -	(SHT)	1400 -
10/31/74	800 c	18	14400 -	10/31/74	1000 w	16	16000 -		15750 -

Robert Drucker c/f Julie

Date Bot.	# shares	Price	Gross Amt.				Date Sold	# shares	Price	Gross Amt			Profit
3/20/72	1000 w	1/4	250 -				10/3/72	1000 w	1/6	1600 -			1350 -
10/3/72	900 c	1/3	6200 -				11/4/72	600 c	1/2				(300 -)

JULIUS KLEINMAN

Date Bot	# Shares	Price	Gross Amt.	Date Sold	# Shares	Price	Gross Amt.	Profit
6/20/72	1500 C	13	19500 -	7/20/72	1100 C	8 1/2	9350 -	3250 -
7/19/72	1000 C	15	20000 -	8/9/72	1500 C	14	21000 -	11500 -
1/29/73	(NEW) 200 C	(ND) 11 1/2	2300 -	10/1/72	300 C	15	4500 -	3000 -
				1/22/73	850 C	24 1/2	20825 -	16575 -
				1/24/73	100 C	(NW) (DT) 12 1/2	1250 -	1000 -
								34575 -

Mary Sharpe

Date Bot.	# shares	Price	Gross Amt.					Date Sold	# shares	Price	Gross Amt.			Profit
Mar. 11, 1971	500 u	2 5/8	1315.50					No	Nov. 21, 1972	50 u	36	1800 -		1668.75
								No	Feb. 15, 1973	150 c	12	1800 -		1420.75
														307.75

NELLIE PYLES (MARY SHARPE)

Date Bt.	# Shares	Price	Gross Amt				Date Sold	# Shares	Price	Gross Amt			Profit
Jan. 4, 1971	500 u	2 1/4	1125-				Mar. 17, 1972	500 u	2 3/4	1375-			250-
Mar. 8, 1971	500 u	2 1/4	1125-										

PLAINTIFF'S TRIAL EXHIBIT 16 -
BENEFICIAL LABS TRADING SCHEDULE
(UNITS, WARRANTS, COMMON)

(pp. 382a - 386a)

BENEFICIAL LABS, Inc.

CONTROLLER

R. DAUGER & J. KLEINMAN

CONTROLLED ACCT.	RELATIONSHIP	# SH. BOT.	# SH. SOLD	DATE	PRICES PRIOR	PRICES ACTUAL	PRICES NEXT	# TRANS.
					2 3/8	2 3/8	2 5/8	
					2 3/8	2 5/8	2 3/4	
					2 5/8	2 3/4	2 1/4	
TRADING ACCOUNT	FIRM	2000		3/10/72	(3/13) 2 3/8	3 1/8	(3/30) 10	
			500	"	3 1/4	10	#5 10 1/4	
		500		"	10	10 1/4	10 1/4	
		500		3/13/72	10 1/4	10 1/4	10 3/4	
		500		3/30/72	10 1/4	10 3/4	(5/8) 11	
		800		4/4/72	(#5) 10 3/4	11	(4/6) 12 1/2	
		700		"	(3/6) 11	(4/6) 12 1/2	13	
		300		"	(4/6) 12 1/2	13	13	
		200		5/8/72	13	13	(6/14) 13	
		200		6/6/72	(6/14) 13	13	13	
			1500	6/13/72	13	13	13	
			1100	"	(6/14) 13	13	13 1/8	
			300	"	13	13	13 1/8	
			1400	"	13	13	(6/14) 13 1/8	
		600		9/14/72	(9/18) 16	16 1/4	(#5) 33	
			500	10/5/72	(9/19) 16 1/4	33	(9/18) 33 1/2	
			1000	10/14/72	(9/18) 33 1/2	30 3/4	(#5) 30 3/4	
		500		10/17/72	(#4) 30 3/4	30 1/4	(#11) 32 3/4	
		100		10/17/72	30 1/4	32 3/4	33	
			700	10/17/72	(#3) 33	35 1/2	35 1/4	
			700	"	35 1/4	35 1/2	35 5/8	
			700	"	35 1/4	35 5/8	35 3/4	
			400	"	35 5/8	35 3/4	36	
			800	11/1/72	(#10) 36	35 3/4	35 3/4	
			400	"	35 3/4	35 3/4	35 3/4	
			700	"	35 3/4	35 3/4	35 5/8	
			400	"	35 3/4	35 5/8	36	
			200	11/3/72	(#4) 36	34	(11/6) 36	
		1750		11/7/72	(11/6) 34	36	(#11) 36	
		50		11/10/72	34	36	(#10) 35	

Plaintiff Exhibit #16

BENEFICIAL LABS, INC.

UNITS

CONTROLLER

R. DRUCKER + J. KLEINMAN

CONTROLLED ACCT.	RELATIONSHIP	# SH. BOT.	# SH. SOLD	DATE	PRICES PRIOR	ACTUAL	NEXT	# TRANS
TRDING ACCT.	FIRM		500	11/20/72	36	35	34	
			600	"	35	34	33½	
			300	"	34	33½	34	
			500	"	34	33¼	33	
			500	"	33½	33	34	
		60		12/7/72	33	34	33	
		500		1/10/73	35	35 7/16	—	

BENEFICIAL LABS, INC

WARRANTS

CONTROLLER
R. DRUKER & J. KLEINMAN

CONTROLLED ACCT.	RELATIONSHIP	# SH. BOT.	# SH. SOLD	DATE	PRIOR	ACTUAL	NEXT	# TRANS.
					PRICES			
C.S. TRADING ACCT.	FIRM		100	3/13/72	1/4	1/4 x	1/2	
		700		3/20/72	1/2	4 3/4	4 1/4	
		300		4/7/72	4 3/4	4 1/4	5	
		500		"	4 1/4	5	4	
		500		"	5	4	4 5/16	
		1100		5/5/72	4 7/16	4 1/4	8	
		4500		8/28/72	4 1/4	8	8	
			4500	9/5/72	8	8 x	8	
		250		9/6/72	8	8	4 3/8	
		3300		9/7/72	8	4 3/8	12 3/4	
			3000	10/5/72	13	14	14	
		1000		10/24/72	14 3/8	16	16	
		1000		"	16	16	16	
		1000		"	16	16	16	
			3000	"	16	16	20	
		2000		2/15/73	10 1/4	18	23	
			2000	"	18	23	—	
NEW YORK HEDGE FUND	OFFICERS & DIRECTORS	3000		10/5/72	(1/5) 14 1/4	14 3/8	(10/24) 16	
PETER RUSSO	NOMINEE		700	3/30/72	(3/17) 1/2	4 3/4	(4/5) 4 1/4	
		700		5/2/72	(4/5) 4	4 5/16	(5/2) 4 7/16	
HUNTER BRASHIER		100		5/3/72	4 5/16	4 7/16	4 1/4	

BENEFICIAL LABS, INC

Controllers

COMMON STOCK

R. DRUCKER & J. KLEINMAN

CONTROLLED	ACCT.	RELATIONSHIP	# SH. BOT.	# SH. SOLD	DATE	PRICES PRIOR	ACTUAL	NEXT	# TRANS.
C.O.S. TRADING ACCT.		FIRM	700		3/10/72	—	2 1/2	2 1/2	
			700		"	2 1/2	2 1/2	2 1/2	
			700		"	2 1/2	2 1/2	2 1/2	
				100	"	2 1/2	2 1/2	3 1/4	
			1000		3/13/72	2 1/2	2 1/4	2 1/4	
			500		"	2 1/4	2 1/4	4	
				300	3/17/72	4 1/4	5 1/4	4 7/8	
			300		"	5 1/4	4 7/8	5 1/4	
			3000		"	5 1/4	4	5 1/2	
				100	3/21/72	5 7/8	5 5/8	6 1/2	
			300		3/23/72	6 7/8	6 1/8	6 1/2	
			300		3/24/72	6 1/8	6 1/2	7	
			400		4/5/72	6 1/2	7	7	
			200		"	7	7	7 1/2	
				100	"	7	7 1/2	7 3/4	
				900	"	7 1/2	7 3/4	7 1/2	
			200		4/24/72	7 1/2	7 5/8	7 1/2	
			200		5/15/72	7 1/2	7 5/8	7 1/4	
			1200		6/8/72	7	7 1/4	7 1/4	
			1000		7/19/72	7 1/4	7 1/4	8 1/2	
			200		8/24/72	7 1/8	9 7/8	9 1/4	
			400		9/19/72	9 7/8	9 1/4	8 1/4	
				8000	"	8 1/4	9	9 1/8	
				300	9/25/72	13	12 5/8	12 3/4	
				100	"	12 5/8	12 3/4	12 1/4	
				100	"	12 3/4	12 1/4	13	
			500		9/26/72	12 1/4	13	13 1/8	
				500	"	13	13 1/8	15	
			300		10/4/72	15	18	18	
				800	10/11/72	13 1/8	15	18	
				800	"	18	18	18	
				900	"	18	18	18	
			500		10/24/72	18	18	17 1/2	

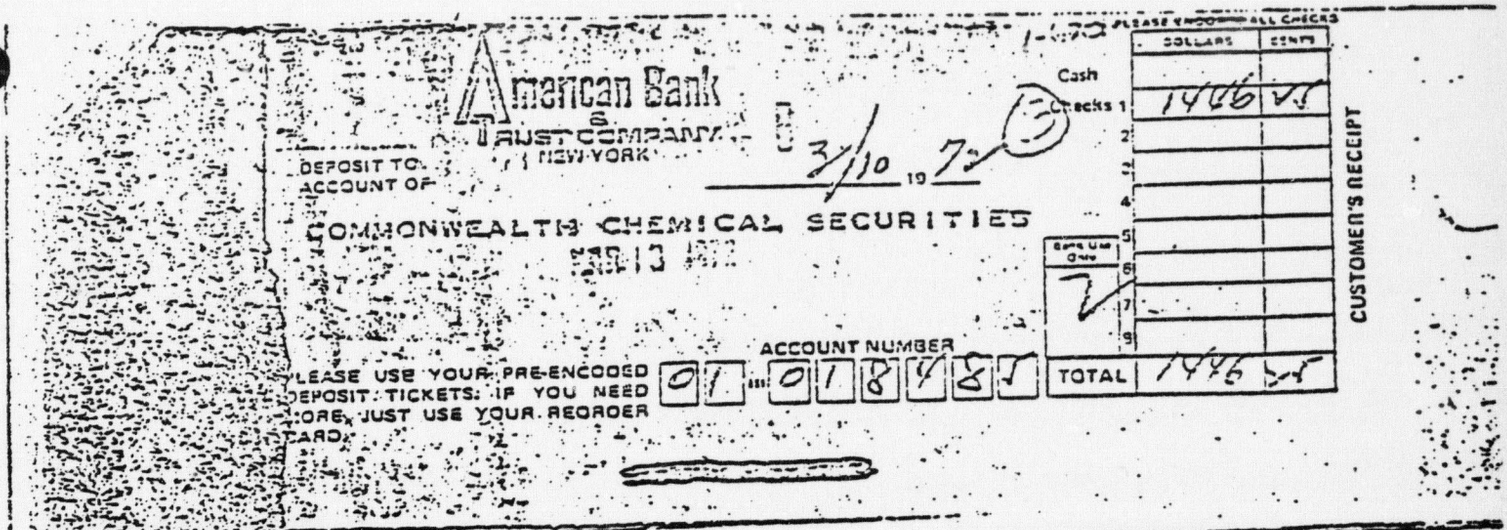
CONTD

BENEFICIAL LABS, INC.
COMMON STOCK

CONTROLLERS
R. DRUCKER & J. KLEINMAN

CONTROLLED ACCT.	RELATIONSHIP	# SH. BOT	# SH. SOLD	DATE	PRICES PRIOR	PRICES ACTUAL	PRICES NEXT	# TRANS.
CCS TRADING ACCT.	FIRM		100	1/10/73	12 *	11 3/4 *	20	
			500	"	11 3/4 *	20	12 1/4 *	
		100		1/11/73	20	12 1/4 *	24 1/2	
			550	1/15/73	12 1/4 *	24 1/2	24 1/2	
			100	2/9/73	10 3/4 *	11 *	11 *	
		3000		"	11 *	11 *	12 *	
			950	2/15/73	11	12	12	
			150	"	12 *	12 *	12	(41)
		3000		2/27/73				
VANGUARD FUND, INC.	D+K controll fund	7000		8/7/72	8 3/4	7 1/8	9 7/8	
		3500		9/xx/72	9 1/8	7 5/8	7 5/8	(2)
N.Y. HEDGE FUND, INC (BERLY DEAN SPEC. FUND)		8000		9/29/72	9	9 1/8	7 5/8	
		3600		9/xx/72	7 5/8	7 5/8	12 1/2	
			300	1/19/73	12 1/2 *	23 3/4	24	
			3000	2/27/73	12 *			(4)

DEFENDANT' TRIAL EXHIBIT A -
TWO CHECKS AND TWO DEPOSIT
SLIPS, MARCH 10, 1972



American Bank & Trust Company
NEW YORK

DEPOSIT TO ACCOUNT OF
COMMONWEALTH CHEMICAL SECURITIES

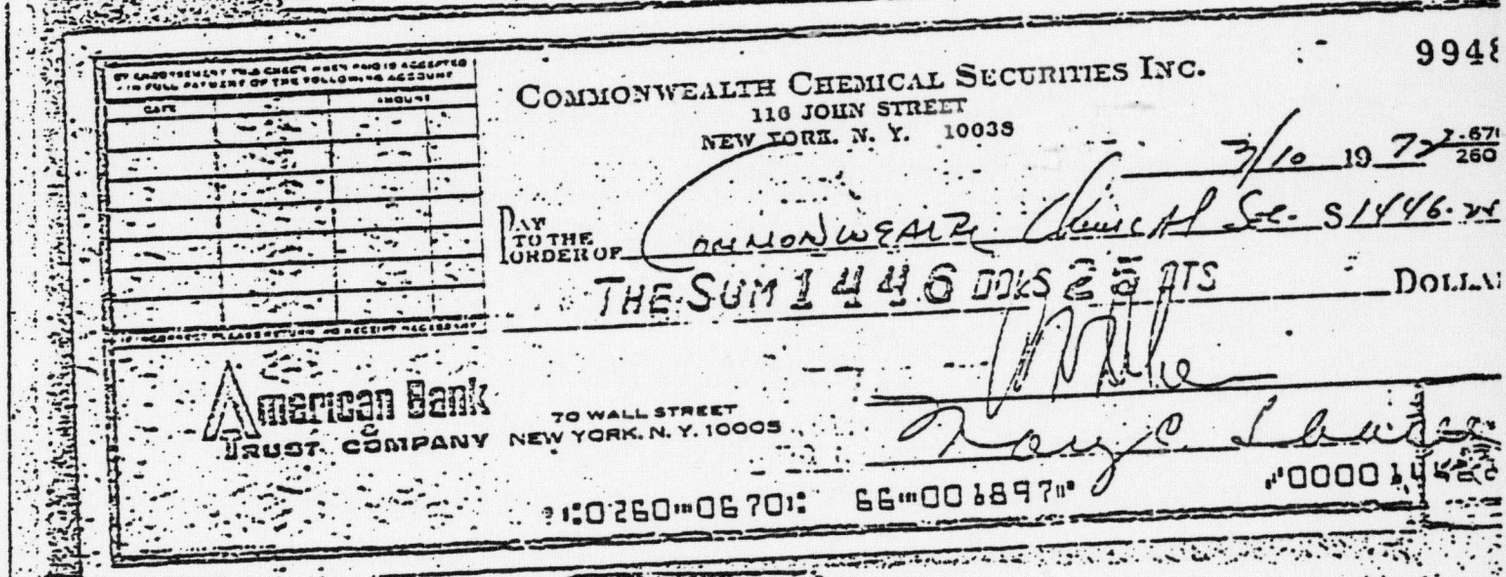
3/10 19 72

	DOLLARS	CENTS
Cash		
Checks 1	1446	XX
2		
3		
4		
5		
6		
7		
8		
TOTAL	1446	XX

CUSTOMER'S RECEIPT

ACCOUNT NUMBER
01 - 018487

PLEASE USE YOUR PRE-ENCODED DEPOSIT TICKETS. IF YOU NEED MORE, JUST USE YOUR REORDER CARD.



COMMONWEALTH CHEMICAL SECURITIES INC.
116 JOHN STREET
NEW YORK, N. Y. 10038

9948

3/10 19 72 1-670/260

PAY TO THE ORDER OF Commonwealth Chemical Sec. $1446.XX

THE SUM 1 4 4 6 DOLLARS 2 5 CENTS DOLLARS

Wm Miller
Royce Lewis

IF CHECK IS NOT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE	AMOUNT

IF INCORRECT PLEASE RETURN AS RECEIPT NECESSARY

American Bank & Trust Company
70 WALL STREET
NEW YORK, N. Y. 10005

⑆0260⑆0670⑆ 66⑈006897⑈ ⑈0000144960

21 4379

3/13/10-10

COMMONWEALTH CHEMICAL SECURITIES

COMMONWEALTH CHEMICAL SECURITIES INC.
116 JOHN STREET
NEW YORK, N. Y. 10038

9944

3/10 19 72 1-670/260

PAY TO THE ORDER OF Commonwealth Chemical Sec. $ 2250

THE SUM 2250 DOLS 00 CTS DOLLARS

American Bank & TRUST COMPANY 70 WALL STREET NEW YORK, N.Y. 10005

⑈:0260⑈0670⑈ 66⑈00 1897⑈ ⑈0000225000⑈

American Bank & TRUST COMPANY NEW YORK

1670

DEPOSIT TO ACCOUNT OF 3/10 19 72

COMMONWEALTH CHEMICAL SECURITIES

PLEASE USE YOUR PRE-ENCODED DEPOSIT TICKETS. IF YOU NEED MORE, JUST USE YOUR REORDER CARD.

ACCOUNT NUMBER ⑆01⑆ 01 8 4 6 7

PLEASE ENDORSE ALL CHECKS

CUSTOMER'S RECEIPT

	DOLLARS	CENTS
Cash		
Checks 1	2250	
2		
3		
4		
5		
6		
7		
8		
TOTAL	2250	

Bank Use Only

21.4265

3/10-10

TO THE ORDER OF
COMMONWEALTH CHEMICAL SECURITIES
ACCT. NO.

DEFENDANTS' TRIAL EXHIBIT C - POWER OF ATTORNEY BY IRVING RUKASIN

Def Ex C id

POWER OF ATTORNEY

I, IRVING RUKASIN, the father and legal guardian of LORI RUKASIN hereby appoints ROBERT DRUCKER to act as investment counselor for LORI RUKASIN with the power to open securities trading accounts, to buy and sell securities, bonds, real estate, and any other investment that ROBERT DRUCKER feels is worthwhile. ROBERT DRUCKER also has the power to open, deposit, withdraw and close bank accounts in the name of and for the befefit of LORI RUKASIN.

ROBERT DRUCKER shall also have the power to secure and retain any legal representation on behalf of or for the benefit of LORI RUKASIN.

This power of attorney granted to ROBERT DRUCKER shall last for as long as LORI RUKASIN is of minor age and as soon as LORI RUKASIN reaches the age of twenty-one this power of attorney shall be terminated.

DATED:

New York, New York

Irving Rukasin

IRVING RUKASIN

DEFENDANTS' TRIAL EXHIBIT D -
PROFIT STATEMENTS

(pp. 391a - 400a)

DOROTHY DRUCKER (ROBERT DEUCKER)

(4/3/72 Acct Recvd. 300 wts) * (50 Sold Sht. - Recv. Lakin/Newark Merc.

Date Bot.	#Shares	Price	Gross Amt.
MARCH 17, 1972	2100 W	1/4	525 -
MARCH 20, 1972	3400 W	1/4	850 -
JAN. 16, 1973	500 C	20	10000 -

Date Sold	# Shares	Price	Gross Amt.			Profit
MAY 4, 1972	100 W	4 7/16	443 75			418 75
May 9, 1972	700 W	4 5/16	3018 75			2843 75
JAN. 15, 1973	550 C	24 1/2	13475 -	* (50 Sold Sht.)	+ Deduct	* 3475 -
JAN. 15, 1973	2000 W	20	40000 -			39500 -

Long - 500 C 20 - 10000⁰⁰ - mark 250⁰⁰ - loss (9250⁰⁰)
Amount - 4 = 675⁰⁰ 0 - loss (675⁰⁰)

Long (9250⁰⁰ / 675⁰⁰)
DEDUCT 50 @ 24 1/2 = (1225)

46 x 37 50
x 475 -
1771 x 50

Long 46 x 37 50
111 150
135,087 50

*(3/71 Recvd 300c)
**(10/17 Recvd 1300sh)
***(11/9 " 1150sh)

Date Bot.	# Shares	Price	Gross Amt.
7/19/71	5350 c	✓	26750-
9/22/71 ③	4500 w	8	36000-
11/17/71 ⑤	600 c	17 1/2	10500-

no purchase to offset sale
no purchase to offset sale

Date Sold	# Shares	Price	Gross Amt.			Profit
3/26/71	300 c	4 7/8	1462.50	(SPT)		1-37.50
7/19/71	1500 c	8 1/2	12750-			5250-
7/21/71	1100 c	8 3/4	9625-			4125-
7/24/71	500 c	8 3/4	4375-			1875-
9/8/71 ②	4500 w	8	36000-			-0-
10/11/71	100 w	12 3/4	1275-		→	1275-
10/24/71 *	1000 w	30 3/4	30750-	Deposit	→	30750-
11/4/71 ***	1250 w	36	45000-	Deposit	→	45000-
11/10 ⑤	600 c	17 1/2	10500-		→	7500-
12/14/71	100 c	20 1/4	2050-			1550-
1/30/73	100 w (new)	10 1/4	1025-			1025-
1/31/73	100 c (new)	12 1/2	1250-			2000-

Hirsh Kleiner	purchase	1000	shs	Blue Flash	Stan Tasher	33000	mark	1500	+	Loss	(31500)
	purchase	3000	&	Joe Arner	— 10%	30000	mkt	4500		loss	(25500) ×½ VK
	purchase	500	units	Hoffiger	17½	8500	mark	750		loss	(7750)

12250

64750

cut loss (27962.50)

100 38750
less → 25750.00
not paid 24,537.50
less → (64750)
+ 12250

392a

DOROTHY RUKASIN (A/K/A ZUCKER)

5/3/72 Recv. - 400 com } No Tax
5/11/72 Recv. - 1400 wts }

Date Bot.	# Shares	Price	Gross Amt.
March 20, 1972	3000 W	1/4	750 -
Long - 2500 WTS - no value			

Date Sold	# shares	Price	Gross Amt.		Profit
MAR. 30, 1972	200 C	6 5/8	1325 -	<SHT. Sale>	1325 -
" 30, 1972	200 C	6 3/8	1275 -	<SHT. Sale>	1275 -
APRIL 7, 1972	5100 W	4	2000 -		1875 -
X 4 -	400	625 (00)			4475 -

Short Sales are not profit - Deduct (2600)
Deduct (625)
Net + 1250

BENEFICIAL LABS SCHEDULE OF

LORI RUKASIN

Date Bgt.	# Shares	Price	Gross Amt.	
MAR. 17, 1972	(a) (b) 1100 uts.	2 3/8	2612 50	(wts. → comm)
MAR 20, 1972	2000 w	1/4	500 -	
NOV. 14, 1972	600 c	17 1/2	10500 -	
NOV. 16, 1972	500 c	17 1/2	8750 -	
DEC. 5, 1972	100 uts	34 1/2	3450 -	
JAN. 26, 1972	300 c	24	7200 -	

Not long -

			cost
300 uts -	2 3/8	=	712.50
100 uts -	34 1/2		3450.00
2000 wts -	1/4		500 00
600 c	17 1/2		10500
500 c	17 1/2		8750
300 c	24		7200

loss →

(DOROTHY DRUCKER)

Date Sold	# Shares	Price	Gross Amt		Profit
APR. 7, 1972	300 uts	10 3/4	3225 -		(a) 2512
Aug. 14, 1972	7000 c	7 1/8	(49875 -)	NO offset purchase	49875 -
Oct. 24, 1972	500 uts	30 3/4	15375 -		(b) 14187

66 595 00

Deduct 49875 00

real FIFO profit — 16700

unReal loss (28412.50)

NET — loss (11712.50)

MKT	Loss
4.50	262 50
1.50	3300
0	500
700	9600
750	8000
450	67500
	28412.50

Robert Drucker

Date Bot.	# shares	Price	Gross Amt.
3/20/72	1000 w	1/4	250 -
10/31/72	800 c	18	14400 -

long - 800 at 14400 - market value = 1200 - (Loss - 13200)

SUSAN (Robert Drucker)

Dte Sold	# Shares	Price	Gross Amt	PROFIT
10/31/72	1000 w	16	16000 -	15750 -

net profit - 2550

ROBERT I. 4= CYCLE (1/3 RECVD. 200 C)

Date Bot.	# Shares	Price	Gross Amt			Date Sold	# Shares	Price	Gross Amt.			Profit
3/20/72	500 U	2 7/8				3/5/72	200 C	5 7/8				
3/20/72	1000 W	1/4	250 -			4/1/72	200 C	7	1400 -	(SHT)		1400 -
10/31/72	800 C	18	14400 -			10/31/72	1000 W	16	16000 -			1750 -
												1750
			long 800 common cost = 14400 - mark to ÷ (13200) loss									(13200)
											NET	+ 3450

Robert Drucker cf. Julie

Date Bot.	# Shares	Price	Gross Amt.				Date Sold	# Shares	Price	Gross Amt			Profit.
3/20/72	1000 w	1/4	250 -				10/3/72	1000 w	16	16000 -			15750 -
10/3/72	900 c	18	16200 -				11/4/72	600 c	17 1/2				(300 -)

JULIUS KLEINMAN

JULIUS KLEINMAN

Date Bot	# Shares	Price	Gross Amt
6/20/72	1500 u	13	19500 -
7/13/72	4000 c	✓	20000 -
11/29/73	(NEW) 200 c	(2) 11 1/2	2300 -

4200 common bought - add 2300 =

long 1850 shares - 1/2 = 2775 ✓✓ cost $\frac{8250}{2300}$ / 10550 - net loss - (7775)

adjust for 1/2 loss - J Annen (12250)

total loss (20,250)

profit 4,675

Date Sold	#Shares	Price	Gross Amt.	Profit
7/20/72	1100 c	8 1/2	9350 -	3350 -
8/9/72	✓ 1500 u	14	21000 -	1500 -
10/12/72	300 c	15	4500 -	3000 -
1/22/73	850 c	24 1/2	20825 -	16775 -
1/24/73	100 c (NEW) (24)	12 1/2	1250 -	1000 -
				49925 -

20,250

Mary Sharpe

Date Bot.	# shares	Price	Gross Amt.		Date Sold	# shares	Price	Gross Amt.			PROFIT
					#2 Nov. 21, 1972	500 L	36	1800 –			1668 75
Mar. 17, 1972	500 L	2 5/8	1313 50		#2 Feb. 15, 1973	150 C	12	1800 –			1406 25
											3075 –
long 300 common - mrk 450											(1662 50)
											2612 50
					loss carryover Rules			(125)			
					loss			(462 50)			

NELLIE PYLES

Date Bt.	# Shares	Price	Gross Amt
Jan. 4, 1971	500 u	2 1/4	1125-
Mar. 8, 1971	500 u	2 1/4	1125-

mkt - 500 units 750.00

(MARY SHARPE)

Date Sold	# Shares	Price	Gross Amt	Profit
MAR. 17, 1971	500 u	2 3/4	1375-	250-

mar - (500 375.00) (-375.00)

net gained 125 (-125.00)

DEFENDANTS' TRIAL EXHIBIT E -
BENEFICIAL LABS SCHEDULE OF
PROFITS, WITH MARKINGS

USA 33s - 475
(ED. 4-23-71)

PLAINTIFF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
15

FPI-NI—2-2-73-10M-6753

PROFITS ON BENEFICIAL LABS.

NAME	GROSS PROFITS		Defendants Computation NASD-mark method	
DOROTHY DANCER	46,387.50		+ 35,087.50	
DOROTHY RUKASIN	475.-		+ 11,250.00	
ROBERT DANCER	1,003,87.50	loss	(- 27,962.50)	
R. DANCER C/F SUSAN	1,575.00		+ 2,550.00	
" " JULIE	1,545.00		+ 10,500.00	
" " CHERYL	1,715.00		+ 3,950.00	
LORI RUKASIN	665.75	loss	(-11,712.50)	
JULIUS KLEINMAN	249.75		+ 4,675.00	
NELLIE SILES	250.-		+ 2,612.50	
MARY SHARPE	307.50			
		294,275.-	+ 20,950	
CON. CHEM SEC. TRADING A/C			Defendants Comp of overstatement by staff	
1) UNITS	164,979.-		148,940	
2) WARRANTS	79,175.75		44,500	
3) COMMON	101,900.-		34,825	
		346,004.75		
TOTAL			640,279.25	
		Wt. ADJUST.	(less) + 17,500	

Overstatement BY SEC

273,325.00

228,265

501,590

518,090

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, : 74 Civ. 1984-LFM

:

-against- : OPINION

:

COMMONWEALTH SECURITIES, INC. :
ROBERT DRUCKER :
JULIUS KLEINMAN :
DK & B MANAGEMENT, INC. :
MARY SHARPE :
ZOLTAN GUTTMAN a/k/a LOU GOODMAN :
MARLANE KLEINMAN a/k/a MARCIA KLEIN :

Defendants. :

----------x

APPEARANCES:

William D. Moran, Esq.
Regional Administrator
Securities and Exchange Commission
Attorney for Plaintiff
26 Federal Plaza
New York, N.Y. 10007
Of counsel: Franklin D. Ormsten, Esq.
Charles B. Pearlman, Esq.
Martin S. Cohen, Esq.
Robert J. Benowitz, Esq.

Schwenke & Devine
Attorneys for Defendants
230 Park Avenue
New York, N.Y. 10017
Of Counsel: Michael C. Devine, Esq.
David M. Butowsky, Esq.

MacMAHON, District Judge.

The complaint in this action rambles for some thirty-four pages and alleges violations of ten statutes and six rules of the Securities and Exchange Commission ("SEC") by fifteen defendants. The presentation of the case upon the trial was confused, disjointed, unfocused, incoherent and, at times, incomprehensible. Nor were the post-trial briefs of any assistance whatever in marshalling the evidence and relating it to the legal contentions of the parties. This has placed an intolerable burden upon the limited time and resources of a busy trial judge in this congested district.

Criminal cases under the securities laws and mail fraud statutes, involving equally complex transactions, are routinely tried and disposed of in this court in a fraction of the effort and time devoted to this poorly presented case. Here, we have been put to the almost endless and certainly exhausting task of trying to bring order out of chaos. Nonetheless, we must deal with the issues of fact in light of the applicable law as best we can perceive them under the circumstances.

Essentially, defendants are charged with fraud in connection with a "best efforts, 50,000 units or none" public offering of 100,000 units of securities of Beneficial Labs, Inc. ("Beneficial") and with manipulation of trading in Beneficial securities with a design to inflate their price artificially and unload them on unsuspecting public investors.

The SEC seeks judgment permanently enjoining defendants from future violations and ancillary relief in the form of disgorgement of profits. A preliminary injunction was granted on May 28, 1974 following a hearing, and a plenary trial to the court was held on March 17, April 30, May 1 and May 2, 1975.

THE PARTIES

Only seven defendants now remain:[1]

(1) Commonwealth Chemical Securities, Inc. ("Commonwealth"), a registered broker-dealer located in New York City, which, as underwriter, commenced a "best efforts, 50,000 units or none" public offering of 100,000 units of Beneficial securities on December 20, 1971.

(2) Robert Drucker ("Drucker"), vice-president and a director of Commonwealth, who, at the time of the

alleged violations, was an officer and director of Vanguard Fund, Inc. ("Vanguard Fund") and of New York Hedge Fund, Inc. ("Hedge Fund"), formerly known as the Berkeley Dean Special Fund, Inc. Drucker was also president and a director of DK & B Management, Inc. ("DK & B") from 1971 through 1974.

(3) Julius Kleinman ("Kleinman"), president, treasurer and chairman of the board of directors of Commonwealth, who, at the time of the alleged violations, was an officer and director of the Hedge and Vanguard Funds. Kleinman was also vice-president, secretary and a director of DK & B.

(4) DK & B, the registered investment advisor to the Hedge Fund from October 24, 1972 to September 22, 1973 and to the Vanguard Fund from March 22, 1972 to July 16, 1973. Drucker and Kleinman are the principal officers and directors of DK & B.

(5) Mary Sharpe ("Sharpe"), Commonwealth's bookkeeper from August 1970 to June 1974.

(6) Zoltan Guttman, a/k/a Lou Goodman ("Guttman"), cashier and registered representative of Commonwealth from November 1970 to December 1973.

(7) Marlane Kleinman, a/k/a Marcia Klein ("Marlane Kleinman"), Kleinman's wife and a stockholder of Beneficial.

THE CLAIMS

Essentially, the SEC asserts two claims:

First, it is alleged that certain defendants participated in a fraudulent offering of Beneficial securities. As mentioned above, Commonwealth, as underwriter, commenced a "best efforts, 50,000 units or none" public offering of 100,000 units of Beneficial securities on December 20, 1971. The offering represented that if 50,000 units were not sold by its termination date (not later than March 19, 1972) "all funds from subscribers will be refunded in full without interest." The SEC asserts that there was a short fall in the sale of the units and that defendants Commonwealth, Drucker, Kleinman, Sharpe and Guttman camouflaged the failure to sell the 50,000 minimum number by placing several thousand units in nominee accounts and by causing a closing to be held on March 10, 1972.

Second, the SEC claims that all defendants participated in a fraudulent scheme to raise the price

of Beneficial securities artificially by manipulating trading after the March 10, 1972 closing, principally by using nominee accounts, by prearranged "swap" transactions with other broker-dealers, and by dumping large blocks of inflated units upon the Vanguard and Hedge Funds which were victimized by conniving fiduciaries, Drucker and Kleinman.

The complaint alleges that the foregoing acts constitute a number of violations of the securities laws.[2]

THE BENEFICIAL OFFERING

On December 20, 1971, Commonwealth, as underwriter, commenced a public offering of 100,000 units of Beneficial securities, at a price of $2.25 per unit, under Regulation A,[3] the small issue exemption from registration. Each unit consisted of one share of common stock and one warrant, immediately exercisable for the purchase of another share of common at $2.25. According to its terms, the offering would fail unless at least 50,000 units were sold by its ninety-day termination date, March 19, 1972. The offering represented that all money received from subscribers would be

deposited in a special bank account maintained by Commonwealth, as trustee for the subscribers, at the American Bank & Trust Company ("American Bank") and that all the subscribers' funds "will be refunded in full" if less than 50,000 units were sold by the termination date.

A "due diligence" conference, attended by defendant Kleinman; Emanuel Brown, counsel to Commonwealth; John Feldman, president of Beneficial; and Alan Geiss, attorney for Beneficial, was conducted in December 1971 by a Mr. Bienenstock, an attorney for the SEC. The purpose of the conference was to inform the persons involved in the offering of their duties and obligations.

Accordingly, Bienenstock advised that all money received from subscribers should be deposited in a special account until the minimum number of units had been sold, but that, if the minimum number were sold before the termination date, a closing should be held at that point, and that further closings, if any, should be held weekly until the termination date of the offering. Bienenstock specifically instructed

that the offering would fail if the minimum of 50,000 units were not sold by March 19, 1972 and that, in that event, all money received from subscribers would have to be returned.

The offering circular was amended on March 8, 1972 to indicate that "[t]he within Offering was terminated on March 8, 1972. As of such date, 50,650 Units had been sold and paid for and the Company [Beneficial] received net proceeds of $94,033.75." This language clearly implied that by March 8, 1972 the goal had been surpassed and that Commonwealth had received and deposited the full purchase price for 50,650 units in the special account. The implicit representation was made express by Kleinman's advising the SEC in writing, on March 8, 1972, that Commonwealth had subscribers for 50,650 units and that a closing would be held within a few days.[4] He enclosed a list of subscribers and the number of units each had bought. Moreover, a closing was held on March 10, 1972, and Beneficial delivered certificates for 50,650 units to Commonwealth in exchange for two checks, totalling $94,033.75, drawn on the special account. That sum constituted the entire balance in the special account.

The SEC claims that, despite Bienenstock's specific instructions and the plain representation of the offering circular, the $94,033.75 deposited by Commonwealth was not the amount it should have received from subscribers if 50,650 units had in fact been sold, since the full price of the units, according to the offering, would be $113,962.50 ($2.25 per unit x 50,650).

Defendant explains the discrepancy as the full purchase price ($113,962.50) less Commonwealth's commissions ($19,928.75). While Commonwealth was entitled to commissions of $19,928.75 on the sale of 50,650 units under the terms of the offering, the bank statement shows that the special account never contained more than $94,033.75 at any time prior to the closing. This leads to two alternative inferences: either (1) that 50,650 units had not been sold, or (2) that Commonwealth had taken its commissions before depositing the subscribers' money into the special account. We will now explore the first of these inferences.

The SEC claims that, contrary to their representations, defendants failed to sell the minimum number of units and that defendants Drucker, Sharpe

and Guttman placed several thousand units in nominee accounts to camouflage the failure.

Joanne Reichin, a former Commonwealth employee, testified that, upon Drucker's request, she furnished the names of four friends -- Sheila Goldberg, Mary Boilen, Sherry Ashen and Alice Greenblatt -- for use on nominee accounts. Those four names also appear on the list of subscribers sent by Kleinman to the SEC, showing that each had bought 2,000 units. Drucker admitted using those names on nominee accounts but denied using them for the purpose of camouflaging a failure of the offering. He claimed that the nominees were used because the true purchaser of the total 8,000 units, a Mr. Massad, instructed him to put the units in the names of nominees.

Drucker testified that on March 10, 1972 he sent these units to Massad in Massachusetts on a "delivery against payment" basis, through the American Bank, which gave him an immediate credit against delivery, but that, due to a mix-up, Massad's bank in Massachusetts was not informed of the transaction and returned the units. According to Drucker, the units

were again sent to Massachusetts and were finally received on March 16, 1972, six days after the closing. Drucker also testified that, a few weeks later, Commonwealth, in a private transaction, repurchased the 8,000 units from Massad.

We find Drucker's testimony on this matter incredible. Defendants' failure to call Massad; Drucker's use of nominees selected by his subordinate, Reichin; Massad's failure to pay for his units before the termination date, as other subscribers had done; and Commonwealth's repurchase of the units in a private transaction shortly after the closing compel the conclusion that Massad was not a bona fide purchaser but a mere tool of the defendants for camouflaging the failure of the offering.

We find, therefore, that Commonwealth, contrary to the representations made in the offering circular, as amended, and in Kleinman's letter to the SEC, had not sold 50,650 units by March 8, 1972; nor had it received and deposited the sales price for such units.

The SEC claims that defendants Sharpe and Guttman also participated in this attempt to camouflage

the failure of the Beneficial offering by placing a number of units in nominee accounts.

Defendant Sharpe opened an account at Commonwealth in the name of her mother, Nellie Pyles, and purchased 1,000 Beneficial units before the termination date. Sharpe testified that she intended to give any profits to her mother. Soon after March 8, 1972, however, she sold 500 units at a small profit, took the check for the proceeds which she had drawn to the order of Nellie Pyles, endorsed her mother's name, and deposited the funds in her own bank account. The profits realized on this sale were never given to her mother. In fact, Nellie Pyles was completely ignorant of this account and of the transactions allegedly conducted for her benefit.

Sharpe explained that, because of some forgotten dispute with her mother, she failed to give her the profits. We find this "gift" explanation incredible and, therefore, conclude that Sharpe did use her mother's name to cloak her own interest in the account.

Sharpe also testified that she opened this account and made the purchase only after consulting with Mr. Brown, counsel to Commonwealth. Brown did not squarely corroborate Sharpe but testified generally that, in response to several inquiries, he advised that it would not be improper for the relatives of Commonwealth employees to buy Beneficial units provided they were bona fide purchasers. Clearly, this does not exculpate Sharpe, for Nellie Pyles was not a bona fide purchaser; it was Sharpe alone who made the purchase, controlled the account, and received the profits from the sale of the units.

We find on a balance of all of the evidence, including Sharpe's relationship as Commonwealth's bookkeeper, the timing of the transaction, the then significance of 1,000 units to the target quantity, and the spurious explanation given on the stand, that Sharpe was knowingly attempting to aid and participate in the fraudulent closing of the offering, with some stake in its success, even though there is no direct evidence that the funds used were not her own or that she acted at the express request of Drucker, Kleinman, or anyone else.

The SEC also claims that defendant Guttman was beneficially interested in an account at Commonwealth in the name of "Sylvia Pavel, custodian for Yitzchok." Kleinman listed that account as a subscriber for 1,000 units in his letter to the SEC.

The evidence shows that Pavel is Guttman's counsin and that Yitzchok is Pavel's son. Guttman testified that he had a loose, verbal arrangement to make loans to Pavel for the purchase of securities. According to Guttman, sometime in late 1971, Pavel opened an account at Commonwealth with funds supplied, at least in part, by Guttman. Guttman admitted that Pavel never signed a "new account card," that he suggested that Pavel buy some Beneficial units, and that 1,000 units were bought using funds from the account. Those funds, Guttman said, had been realized from the sale of other securities. Guttman also testified that, after the closing, he directed that the units be sold and that the proceeds were sent to Pavel. He claimed that, soon thereafter, he received a "loan" from Pavel, but denied having any beneficial interest in the account.

Guttman's testimony is incredible. Not a scrap of paper was offered to support his story. More significantly, his testimony is contradicted by his own prior admissions to the SEC that the Beneficial units were purchased "with my funds, basically," and that "the stock is for my interest." Finally, Drucker testified, on cross-examination, that Guttman had told him that he had a "partnership interest" in the Pavel account.

The evidence is overwhelming that Guttman had an interest in the Commonwealth account carried as "Sylvia Pavel, custodian for Yitzchok." He admitted that he was the source of at least some of the funds used to buy the Beneficial units, that he had suggested their purchase, that he had discretionary authority over the account which he exercised when he directed the sale of the units, and that he had received a "loan" after the units had been sold. As was the case with Sharpe, in light of all the circumstances there considered, which are even more significant here, we find that Guttman knowingly participated in this fraudulent scheme by causing this purchase to camouflage the failure of the Beneficial offering.

It seems unnecessary, in view of the above findings, to discuss the second possible inference that could be drawn from the discrepancy in the bank statement, that is, that the discrepancy was caused by Commonwealth's taking its commissions before depositing the subscribers' funds. Defendants, however, have urged that inference, and we should, therefore, consider it.

Defendants failed to present any creditable evidence that their contention is true, but, even if it were, they would, nevertheless, be liable for making false representations. The offering circular expressly represents that all money received from subscribers would be deposited in the special account, not that the underwriter would first deduct commissions and then deposit only the remainder. Nor did defendants even attempt to answer the troublesome question of how Commonwealth could take its commissions in good faith before it was entitled to them under the terms of the offering, viz., before the successful closing? Absent participation in a fraudulent engineering of the closing, no one could be prescient

enough to know that a particular offering will succeed before that event actually occurs. In short, we reject defendants' contention that the discrepancy was caused by the premature taking of commissions as wholly untenable and inconsistent with the facts which we have already found.

We turn now to the second claim that, after the closing, the defendants artificially manipulated the market in Beneficial securities.

MANIPULATION

The SEC contends that, following the March 10, 1972 closing, defendants Commonwealth, Drucker, Kleinman, DK & B, Marlane Kleinman, Sharpe, and Guttman artificially inflated the price of Beneficial securities by dominating the market through trading in accounts directly under their control.

Drucker and Kleinman controlled the Commonwealth trading account, as well as individual accounts in their own names. Drucker admitted that he also controlled three accounts in his name, as custodian for his children, Cheryl, Julie, and Susan, and other accounts in the name of Lori Rukasin, his sister-in-law.

There were two accounts maintained at Commonwealth in the names of Dorothy Drucker and Dorothy Rukasin (Mrs. Drucker's maiden name). Mrs. Drucker testified that she never authorized anyone to open an account in her name and that she never participated in any transactions involving Beneficial securities. Defendant Drucker, while denying any beneficial interest in these accounts, admitted that he made all investment decisions for his wife. These two accounts were, therefore, under his direct control.

There is no dispute that defendant Kleinman made all investment decisions on behalf of the account in the name of his sister, Regina Sinofsky.

Drucker and Kleinman were also principals of both the Vanguard and Hedge Funds, as well as of DK & B, and, as such, made all investment decisions for the funds during the period that DK & B acted as investment advisor.

To recapitulate, we find that defendants Commonwealth, Drucker, Kleinman and DK & B controlled the following twelve accounts: (1) Commonwealth Trading

Account; (2) Robert Drucker; (3) Dorothy Drucker; (4) Dorothy Rukasin; (5) Lori Rukasin; (6) Robert Drucker, custodian for Cheryl; (7) Robert Drucker, custodian for Susan; (8) Robert Drucker, custodian for Julie; (9) Julius Kleinman; (10) Regina Sinofsky; (11) Vanguard Fund; and (12) Hedge Fund (Berkeley Dean Special Fund).

Three charts, prepared by Mr. Judkowitz, an employee of the SEC, were received in evidence upon the hearing for a preliminary injunction. The first, Exhibit 7, shows the trading in Beneficial common stock from March 10, 1972 to February 27, 1973; the second, Exhibit 9, the trading in Beneficial warrants from March 10, 1972 to February 15, 1973; and the third, Exhibit 10, the trading in Beneficial units from March 10, 1972 to January 10, 1973.[5]

Mr. Judkowitz testified that, in preparing these charts, he relied upon original order tickets, if available, or confirmation statements.[6] He had obtained these documents from the market makers in Beneficial securities, as reflected in the National Quotation Bureau's "pink sheets" or from other broker-dealers who traded with the market makers.

These charts, we find, reveal with a reasonable degree of accuracy what they purport to show, that is, trades in Beneficial securities in which market makers were involved. After careful study of them, we make the following findings:

The accounts controlled by defendants Commonwealth, Drucker, Kleinman, and DK & B participated in an extraordinarily large number of transactions involving Beneficial securities. These accounts, for example, participated in about 70% of all transactions in Beneficial common stock from March 10, 1972 to February 23, 1973, 41% on the buying side. In 9% of all these transactions, controlled accounts were on both the buying and the selling sides.

Similarly, accounts controlled by these defendants participated in about 67% of all transactions in Beneficial warrants and 51% of all transactions in Beneficial units. Overall, during the period reflected by the charts, these accounts participated in about 66% of all transactions involving any of the three types of Beneficial securities. In 40% of all transactions, these accounts were on the buying side, and in 7.5% they were on both sides.

These figures become even more significant when compared with the rapid increase in the price of the securities. Beneficial common stock, for example, rose from a price of $4 bid - $5 offer on March 14, 1972 to $14 bid - $15 offer by the end of September 1972. Similar increases occurred for Beneficial units and warrants. During this period, however, no earnings were reported by Beneficial. Drucker testified that Beneficial was "doing well" and that prospects looked good "on the horizon." It is utterly incredible, however, that it was the performance of Beneficial which prompted the dramatic increase in the price of its securities.

The foregoing, without more, strongly suggests that Commonwealth, Drucker, Kleinman, and DK & B were involved in a fraudulent scheme to manipulate trades and artificially inflate the price of Beneficial securities. Other evidence, however, establishes that these defendants, at the very least, participated in a number of transactions in which their bad faith cannot be doubted.

Vincent Caccesse, formerly a representative and trader with the brokerage firm of A.C. Kluger, a market maker for Beneficial securities, testified that on September 19, 1972 Drucker telephoned to open an account for the Berkeley Dean Special Fund (later known as the Hedge Fund) and ordered 8,000 shares of Beneficial common stock. When Caccesse reported that he was unable to fill such a large order through a number of market makers, Drucker suggested that he try Commonwealth which Caccesse did with instant success.

Commonwealth's ready ability to supply so large a block warrants the inference that it had sufficient control to dominate and direct trading in Beneficial securities. Furthermore, that Drucker was manipulating the market is clear from the indisputable fact that behind the scenes he was on both sides of the transaction, dealing with himself in his dual and conflicting roles as a director and investment advisor of the buyer, Berkeley Dean Special Fund, and as president of the seller, Commonwealth.

There is also evidence of similar self-dealing by Drucker in August 1972, when, through Amherst Securities, another broker-dealer, he sold 7,000 shares of

Beneficial common stock from the account of Lori Rukasin, which he controlled, to the Vanguard Fund, of which he was an officer and investment advisor.

Another example of these "bad faith" transactions is the so-called "swap" transaction between Commonwealth and Cabot Shaw, another broker-dealer. Gerald Wolff, formerly a trader at Cabot Shaw, testified that, in February 1973, he and Drucker negotiated a dollar-for-dollar exchange of stock between Commonwealth and Cabot Shaw, under which Cabot Shaw purchased 2,000 units of Beneficial, at $35 per unit (total = $70,000), and Commonwealth purchased 4,500 shares of Environmental Devices, Inc. ("EDI"), stock at $7-3/4 per share (total = $34,875). According to Wolff, Joseph Arner, Kleinman's uncle, completed the transaction by purchasing 5,000 EDI shares, at $7-3/4 per share (total = $38,750).[7]

Wolff's testimony was corroborated in part by Drucker, who admitted that an exchange of securities between Commonwealth and Cabot Shaw had indeed occurred. He acknowledged that Cabot Shaw's purchasing of the Beneficial units "was an inducement" to Commonwealth's buying the EDI shares. He also testified that Kleinman

had spoken to him and to Arner in early February 1973 about Arner's opening an account at Cabot Shaw. Drucker denied, however, that he arranged the Arner purchase of 5,000 EDI shares as part of the "swap" transaction.

The SEC placed in evidence copies of confirmation slips relating to the "swap" transaction. They show that three things occurred on February 15, 1973: (1) Cabot Shaw purchased 2,000 Beneficial units, at $35 per unit, from Commonwealth; (2) Commonwealth purchased 4,500 EDI shares, at $7-3/4 per share, from Cabot Shaw; and (3) Joseph Arner, through his account at Cabot Shaw, purchased 5,000 EDI shares, at $7-3/4 per share, from the Cabot Shaw trading account.

We find from all of the evidence that defendants Drucker and Kleinman negotiated and carried out a dollar-for-dollar "swap" of securities between Commonwealth and Cabot Shaw and that, as part of this transaction, Drucker and Kleinman arranged the Arner purchase of 5,000 EDI shares. We note in this regard that Kleinman and Drucker, at the very least, knew of the Arner account at Cabot Shaw; that the Arner purchase nearly equalized the dollar values of the securities exchange

and that Arner's purchase occurred on the same day as the direct exchange between the two brokerage firms.[8]

This type of transaction introduces a foreign element -- a prearranged business quid pro quo -- to those which normally establish the price of a particular stock, namely, supply and demand in a public auction market, free from artificial manipulation, and the performance of the issuing company in a system of free competitive enterprise. Such a transaction is manipulative both because it tends to support an artificial and inflated price for the securities and because it portrays a false appearance of wide investor interest.

In a free and open public market, it is the competing judgments of numerous buyers and sellers in an auction which establishes the fair price of a security. When individuals, occupying a dominant market position, undertake a scheme to distort the price of a security for their own gain, they violate the securities laws by perpetrating a fraud on all public investors.

Here, there can be no question that Drucker, Kleinman and Commonwealth misused their dominant market position to manipulate trading and inflate the price of

Beneficial securities artificially for their own gain, at the expense of the investing public. Defendants' argument that the over-the-counter market cannot be manipulated, since prices are not reported on a stock exchange,[9] borders on the frivolous. The quotations which appear in the "pink sheets" serve as a guide to the price of securities in the over-the-counter market. The price shown in the pink sheets, therefore, did not represent the true market value of Beneficial securities but reflected the artificial price resulting from defendants' manipulation. Defendants directly contributed to the pink sheet quotations for Beneficial securities by their manipulated dealings with market makers. As we have seen, these transactions were not bona fide but were rigged purchases by controlled accounts and prearranged dollar-for-dollar swaps.

The SEC claims that Sharpe, Guttman and Marlane Kleinman participated in the scheme to inflate the price of Beneficial securities artificially through various accounts under their control.

We have previously discussed Guttman's control over the Sylvia Pavel account and Sharpe's control over

the Nellie Pyles account. In addition, Sharpe maintained an account at Commonwealth in her own name.

It is not disputed that Marlane Kleinman opened an account under the name of Marcia Klein at Merrill Lynch, Pierce, Fenner & Smith and that she purchased 100 beneficial units on October 17, 1972 and 500 units on November 20, 1972. Later, on January 10, 1973, Commonwealth bought 500 units from her Merrill Lynch account. At no time did Marlane Kleinman offer any evidence to refute any of the charges made against her.

While the number of transactions in which Sharpe, Guttman and Marlane Kleinman participated and the relative amounts involved are not large, they, more or less, coincided with the manipulations of Drucker and Kleinman, and there is no blinking the fact that each of these defendants was inextricably linked to those dominant insiders and that a fair preponderance of the evidence indicates that they must have known of the fraudulent scheme.

We have already noted Sharpe's and Guttman's connection with the fraudulent closing of the

Beneficial offering. And during the period of market manipulation, they remained insiders at Commonwealth.

Marlane Kleinman is Kleinman's wife, and there are two telling circumstances concerning her transactions:

First, we note that Commonwealth sold 100 Beneficial units, at $32-3/4 per unit, to Hill, Thompson, Magid & Co., another broker-dealer, at 12:00 noon on October 17, 1972. Six minutes later, at 12:06 P.M., Hill, Thompson, Magid & Co. sold 100 Beneficial units, at $33 per unit, to Merrill Lynch for the account of Marcia Klein. It is difficult to understand why Marlane Kleinman bought in this circuitous manner rather than by dealing directly with her husband's firm, thus saving at least a fourth of a point per unit, unless, of course, she was interested not in obtaining the lowest possible price but in participating in camouflaging the transaction and in creating the false appearance of wide investor interest through the involvement of other broker-dealers.

Second, we note the "coincidence" that ultimately, on January 10, 1973, Commonwealth bought 500 units

from Marlane Kleinman's account at Merrill Lynch, thus completing the circle.

We find on a balance of all the evidence that Sharpe, Guttman and Marlane Kleinman were in a position to know of the illegal scheme, saw an opportunity to make substantial profits, participated in the trading, and negligently, if not knowingly, aided the manipulation. This was a scheme in which "every little bit helps," and these defendants, dependent upon either Drucker or Kleinman, dutifully assisted the unlawful plan.

We turn now to the SEC's claim that Drucker, Kleinman and DK & B misused the assets of the Hedge and Vanguard Funds to accomplish the ends of their manipulative scheme, resulting in substantial losses to the funds.

FUND TRANSACTIONS

As we have previously mentioned, Drucker and Kleinman were responsible for the investment decisions of the Hedge and Vanguard Funds through DK & B. In addition, the boards of directors of both funds were

identical: Drucker, Kleinman and two "outside" directors whom they recruited, Dr. Smith and Dr. Dash.

Drucker and Kleinman took advantage of their dual and conflicting roles by causing the funds to buy, and Commonwealth to unload, large amounts of Beneficial securities at artificially inflated prices. We have already discussed two such transactions. Through various transactions, the funds bought a total of 22,100 shares of Beneficial common stock, at a cost of $177,012.50, and 3,000 warrants, at a cost of $43,125. The callous disregard of fiduciary duties, brazen conflict of interest, and fraudulent self-dealing thus mulcted the funds of $220,137.50.

There are still other instances of fraudulent dealing by these fiduciaries. Wolff testified that in late February 1973, Drucker asked Cabot Show to buy 5,000 shares of EDI from Commonwealth and to sell them to the Vanguard Fund. When Wolff questioned Drucker's authority to buy for the fund, he was informed that a principal of the fund would call him. Fifteen minutes later, Kleinman telephoned Wolff and assured him that Drucker was authorized to buy for the fund. The sale

was consummated; Cabot Shaw bought the shares from Commonwealth, at $7-5/8 per share, and sold them to Vanguard at $7-3/4 per share. This calculated self-dealing by Drucker and Kleinman demonstrates their blatant breach of their fiduciary obligations to deal faithfully for the benefit of the shareholders of the funds.

Dr. Smith, one of the funds' "outside" directors, attended a directors' meeting called by Drucker in December 1972. He learned, to his surprise, of the "large position" both funds had in Beneficial securities. Nevertheless, Drucker urged that the funds hold the shares because a sale of such a large block would depress its market price. He suggested, instead, a 10% devaluation in the portfolio value of the securities.

At another meeting of the directors of the funds, held in late February 1973, Smith learned that Commonwealth had been the underwriter for the Beneficial offering and that the SEC was investigating Beneficial. This meeting was continued two days later, and the discussion centered on the conflict of interest of Drucker and Kleinman and on the need for new management.

The SEC suspended trading in Beneficial securities on March 5, 1973, and in May 1973 David Rosen was retained as attorney for the funds. He was informed that there were serious problems because of the funds' substantial holdings of Beneficial securities. It was decided that the Hedge Fund should be liquidated and dissolved and that the Vanguard Fund should transfer its assets to the Pilgrim Fund, Inc. ("Pilgrim Fund") in exchange for Pilgrim Fund shares to be distributed in a tax-free reorganization to the former shareholders of Vanguard Fund. Rosen prepared proxy materials to obtain the permission of the shareholders of each fund to proceed with this plan.

The proxy materials show that, as of March 2, 1973, the last trading date before the SEC suspended trading in Beneficial securities, the net asset valuation of the Hedge Fund was $329,929. Of this amount, in excess of $260,000 was attributed to the valuation of Beneficial securities; fully 71.1% of the total valuation. Similarly, on that date Vanguard Fund's net asset valuation was $1,184,776, of which $210,000 was attributed to the valuation of Beneficial securities, or approximately 17.7% of the total valuation.

The funds were unable to sell their Beneficial holdings publicly for the SEC had suspended trading. A search for a private buyer proved fruitless until September 1973, when Ofinco, Inc. offered to buy the Beneficial shares. Dr. Smith and Dr. Dash, the only remaining directors of the funds, rejected the offer, anticipating that the suspension would be lifted. The suspension was lifted on October 31, 1973, but there was still no public market for the securities. Ofinco, Inc. made a new offer, which was accepted, to purchase the funds' holdings of Beneficial securities, at $.48-3/4 per share for the common stock and $.12-1/2 per warrant. As a result, the funds sustained an aggregate net loss of $158,345.[10]

The Insurance Company of North America disclaimed liability on fidelity bonds when the funds sought to recoup their losses. The Hedge Fund was in the process of liquidation at the time of trial and had retained about $7,000 in assets, most of which was earmarked for taxes, accounting fees and other expenses. The Vanguard Fund was transferring its assets to the Pilgrim Fund and had approximately $7,000 remaining at that time.

VIOLATIONS OF THE SECURITIES LAWS

Commonwealth, Drucker and Kleinman.

It is clear that Commonwealth, Drucker and Kleinman are liable for several violations of the securities laws. We note initially that throughout the relevant time period they used the mails, telephone and other means of interstate commerce in their various transactions.

As we have previously detailed, these defendants failed to sell the minimum of 50,000 Beneficial units prior to the March 8, 1972 termination date of the offering. Nevertheless, they caused a closing on the issue to be held on March 10, 1972.

A subscriber to an offering, made on a "part or none" representation, is assured that he will be entitled to a full refund of his money if the security fails to appeal to a sufficient number of investors to reach the minimum limit. These defendants, however, knowing that sales to the public were falling short of the required 50,000 unit minimum, disguised the investing public's rejection of the offer by

spurious sales to controlled accounts and by closing the issue knowing full well that 50,000 units had not been sold.

There can be no question that their conduct constitutes a scheme, artifice and device to defraud by means of both false representations and non-disclosure of material facts, in violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act.

Drucker, Kleinman and Commonwealth also violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 promulgated thereunder. Section 15(c)(2) makes it unlawful for a broker to effect any transaction in any security not on a national securities exchange where such broker "engages in any fraudulent, deceptive or manipulative act or practice, or makes any fictitious quotation." Rule 15c2-4 defines a "fraudulent, deceptive or manipulative act or practice" as, in an "all or none" distribution (or a "part or none" distribution, as in the present case), the acceptance by a broker of any part of the sales price of the security being distributed unless:

> "the money or other consideration received is promptly deposited in a separate bank account as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted to the persons entitled thereto. . . ."11

Drucker, Kleinman and Commonwealth did not, upon the failure of the Beneficial offering, return the subscribers' funds, as they should have, but caused a fraudulent closing to be held. Thus, they violated Section 15(c)(2) of the Exchange Act and Rule 15c2-4 promulgated thereunder.

It is also asserted that Commonwealth, Drucker and Kleinman violated Rule 10b-6, which provides that it is a manipulative or deceptive device or contrivance under Section 10(b) of the Exchange Act for any underwriter or broker, participating in any distribution of securities, to:

> "bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution . . . until after he has completed his participation in such distribution. . . ."

Since Commonwealth had not sold the minimum of 50,000 units by March 10, 1972 and, therefore, had not "completed" its participation in the offering, and in light of the fact that, following the closing, these defendants immediately commenced trading in Beneficial securities, we conclude that Commonwealth, Drucker and Kleinman have violated Rule 10b-6.

The SEC claims that Drucker, Kleinman and Commonwealth violated Section 5(a) and (c) of the Securities Act in that they sold Beneficial securities at a time when no registration statement was in effect.

It is not disputed that the Beneficial offering was made pursuant to an exemption from registration under Section 3(b) of the Securities Act and Regulation A promulgated thereunder, the so-called "small issue" exemption.[12] Plaintiff contends that defendants' fraud vitiated the exemption. We reject the contention.

The case of United States v. McGuire, 249 F. Supp. 43 (S.D.N.Y. 1965), aff'd, 381 F.2d 306 (2d Cir. 1967), cert. denied, 389 U.S. 1053 (1968), cited by plaintiff, is distinguishable. There, the district court found that three corporations were organized and

controlled by defendant McGuire in furtherance of a conspiracy to evade the registration requirements of the Securities Act. Each corporation, in turn, filed for the Regulation A exemption and commenced the sale of stock. The court held that Section 5 of the Securities Act was violated because the corporationswere "affiliated" and their combined offering exceeded the maximum amount allowable under Regulation A, that is, these offerings were ineligible for the exemption by the terms of the regulation itself..

There is no question in the instant case that the Beneficial offering was eligible for the small issue exemption initially. However, plaintiff claims that the exemption was vitiated ab initio by defendants' subsequent fraudulent conduct. Plaintiff cites no authority in support of its contention, and we have found none.

We have found no evidence of any fraudulent intent, plan or scheme on the part of defendants, prior to or at the time of the granting of the Regulation A exemption, and, absent such evidence, we think McGuire inapplicable. We conclude that, despite the subsequent

violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, the small issue exemption was not vitiated but remained in effect throughout the Beneficial offering and, therefore, no violation of Section 5 of the Securities Act occurred.[13]

It is alleged that Commonwealth, aided and abetted by Drucker, Kleinman, Sharpe and Guttman, violated the bookkeeping rules of the Exchange Act[14] in that its records did not reflect the beneficial owners of certain accounts, namely, the Goldberg, Boilen, Greenblatt, Ashen, Pyles and Pavel accounts. We find that this allegation has been established.

Drucker admitted using the names of Reichin's four friends as nominees for Massad. Similarly, Sharpe disguised her interest in the Beneficial securities in the Nellie Pyles account, and Guttman did the same with respect to the Pavel account. Kleinman showed his complicity by authoring the March 8, 1972 letter to the SEC containing names of fictitious subscribers. Thus, these accounts did not reflect the names of the beneficial owners. These defendants, therefore, violated the bookkeeping rules.

Immediately subsequent to the closing, Commonwealth, Drucker and Kleinman commenced trading in Beneficial securities in a manner calculated to inflate their price artificially. The dominance of the trading by accounts under their direct control, the manipulation of the market through prearranged swap transactions, and the sale of substantial blocks of these securities to the Hedge and Vanguard Funds constituted a fraud upon innocent investors during this period and a violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5.

In addition, Drucker, Kleinman and Commonwealth violated provisions of the Investment Company Act. Section 17(a) of the Investment Company Act forbids an "affiliated person" of a registered investment company, or "any affiliated person of such a person," from knowingly selling any security to that investment company. Both the Hedge and Vanguard Funds were registered investment companies. Drucker and Kleinman, as directors of the funds, were "affiliated persons," as defined by the Act,[15] and Commonwealth was affiliated with them.[16]

Section 48(a) of the Investment Company Act provides:

> "It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder."

Perhaps the clearest, but by no means the only, violation of these statutes is the transaction in which Drucker requested Cabot Show to purchase 5,000 shares of EDI from Commonwealth and to sell them to the Vanguard Fund. Kleinman telephoned Wolff at Cabot Shaw to assure him that Drucker had authority to place an order for the fund. Thus, these defendants attempted to disguise the violative nature of this transaction by interpositioning Cabot Shaw between Commonwealth and the fund. We conclude, therefore, that these defendants violated Section 17(a) and 48(a) of the Investment Company Act.[17]

Commonwealth, Drucker and Kleinman have also been charged with violating Section 36(a) of the Investment Company Act in breaching their fiduciary duties

toward the funds by fraudulently steering and engineering both sides of the various transactions in Beneficial securities. In light of the clear showing that these defendants acted purposefully in their dual and conflicting roles in placing large blocks of Beneficial securities with the funds at the same time they were artificially inflating the price of the securities, we conclude that they violated Section 36(a) of the Investment Company Act.

The SEC also claims a violation of Section 37 of the Investment Company Act, which makes it a crime to steal, embezzle or convert funds or assets of a registered investment company. That statute has been construed to give an implied right of private civil action for its violation.[18] Although we have found no case in which the SEC brought suit to enforce this statute, we believe that the SEC may do so under its broad powers to compel compliance with the securities laws.

What must be shown to constitute a violation of this statute? In Tanzer v. Huffines, 314 F. Supp. 1[illegible] (D. Del. 1970), the court stated:

"Conversion, as used in the Act, includes misuse or abuse of property. It also includes use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use."19

Applying that test, we conclude that the wilful misconduct of Drucker, Kleinman and Commonwealth, in using the assets of the funds in their unlawful scheme to inflate and artificially support the price of Beneficial securities and in "dumping" large blocks of these watered securities on the funds, constitutes a misuse of assets entrusted to them sufficient to violate Section 37 of the Investment Company Act.

DK & B.

DK & B, as investment advisor to the funds, was used by Drucker and Kleinman in their unlawful scheme to defraud. We conclude, therefore, that DK & B violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Sections 17(a), 48(a), 36(a) and 37 of the Investment Company Act.

In addition, DK & B, aided and abetted by Drucker and Kleinman, is charged with violating Section 206(1) and (2) of the Advisers Act. This statute provides:

> "It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly--
>
> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
>
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."

Since the mails were used to accomplish the fraudulent scheme of Drucker, Kleinman and DK & B which we have found, this statute was clearly violated by them.

Sharpe and Guttman.

We have already concluded that Sharpe and Guttman violated the bookkeeping provisions of the Exchange Act (Section 17(a) and Rule 17a-3)) in their use of the Pyles and Pavel accounts. The SEC also

claims that they have violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder in lending assistance to the fraudulent closing of the Beneficial offering and to the manipulation of the market after the closing.

It has been held that a negligence standard applies in measuring the civil liability of an individual charged with having aided and abetted a securities law violation.[20]

> "The test therefore is whether the 'defendant should have been able to conclude that his act was likely to be used in furtherance of illegal activity.' Knowledge that a violation is being committed and intent to further the illegal act is not required."[21] (Citations omitted.)

Applying this test, there is no question that these defendants, as insiders at Commonwealth, were in a position to realize that their actions would further the illegal activities of Drucker and Kleinman and, in the exercise of reasonable care, should have concluded from the facts we have found pertaining to them that their acts would be used to further the scheme to

defraud. Sharpe and Guttman, therefore, violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

Marlane Kleinman.

The same considerations as applied to Sharpe and Guttman are present with respect to Marlane Kleinman. She also was in a position to know of the fraudulent scheme and should have known, in the exercise of reasonable care, that her actions of opening an account under a different name, at a different broker, and in entering the Beneficial trading market, would aid in its success. We conclude, therefore, that Marlane Kleinman violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

INJUNCTIVE RELIEF

Plaintiff seeks broad injunctive relief against Commonwealth, Drucker, Kleinman, DK & B, Sharpe, Guttman and Marlane Kleinman. Defendants claim that injunctive relief is unnecessary since neither Commonwealth nor DK & B is operational and

since the individuals are no longer involved in the securities business.

The SEC, however, "appears in these proceedings not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws."[22] The crucial test is whether "there is a reasonable likelihood that the wrong will be repeated."[23] And whether this inference should be drawn depends on the totality of the circumstances.[24]

A recent case delineated a number of circumstances to be considered, including:

> "the fact that defendant has been found liable for illegal conduct; the degree of scienter involved; whether the infraction is an 'isolated occurrence;' whether defendant continues to maintain that his past conduct was blameless; and whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated."[25] (Citations omitted.)

We note, in particular, the repeated and persistent violations committed by Drucker, Kleinman,

Commonwealth and DK & B. Also, Drucker still receives $500 per month as a "consultant" to Beneficial (whose president is Drucker's brother-in-law). Kleinman not only declined to testify on his own behalf but neglected even to attend the trial of this case.[26]

Taking all of the circumstances into account, we find that there is a reasonable likelihood that Drucker, Kleinman and the two corporations under their control, Commonwealth and DK & B, will continue to violate the securities laws. Permanent injunctive relief is, therefore, warranted. Furthermore, we conclude that the public interest can best be protected if the injunction extends not only to Beneficial securities but to any other securities as well.

> "The effect of such restraints on their business activities is clearly outweighed by the public interest involved in maintaining a fair and honest securities market and in sustaining public confidence in that market."[27]

Similar considerations apply to Sharpe, Guttman and Marlane Kleinman. They were not innocent bystanders but insiders who attempted to exploit the

illegal activities of Drucker and Kleinman for their own gain, thus lending assistance to the unlawful plan. We see no reason to believe that, should a similar opportunity arise in the future, they would shy away. We conclude, therefore, taking all relevant factors into account, that a permanent injunction covering Beneficial and any other securities should be entered against Sharpe, Guttman and Marlane Kleinman.

ANCILLARY RELIEF

Lastly, plaintiff seeks ancillary relief in the form of a disgorgement of profits. It is well settled that once equity jurisdiction is invoked by a showing of violations of the securities laws, the court may order a disgorgement of profits.[28]

> "Clearly, it would defeat the purpose of the securities laws if an individual who violated Section 10(b) and Rule 10b-5 were allowed to keep the profits arising from the violation. Thus, effective enforcement of the law requires that the S.E.C. be able to make violations unprofitable by making violators disgorge their profits."[29]

We conclude that in this case such relief is clearly warranted against each defendant.

Defendants claim that any profits they may have realized have been wiped out by the drastic fall in the public trading price, resulting from the SEC's suspension of trading in Beneficial securities. It is asserted, therefore, that there are no profits to be disgorged.

Defendants neglect to mention, however, that the Beneficial suspension occurred because of their own wrongdoing. To allow them to credit their subsequent losses against their prior gains would be to permit them to profit from their own wrongs.

We conclude, therefore, that Commonwealth, Drucker, Kleinman, DK & D, Sharpe, Guttman and Marlane Kleinman must disgorge all actual profits realized on the purchase and sale of Beneficial securities from December 20, 1971 to the close of business on March 2, 1973, the last trading date prior to the suspension. The amount of such profits shall be paid by them to an escrow agent, to be appointed by the court. The escrow agent shall use his best efforts to locate those members of the public who invested in Beneficial securities between December 20, 1971

and March 2, 1973 and, out of the sums deposited with him, pay each such person an amount to be determined by him to be equitable and fair.

The foregoing opinion constitutes this court's findings of fact and conclusions of law, in accordance with Rule 52, Fed.R.Civ.P.

Settle an order and judgment, within twenty (20) days of the date of this opinion, accompanied by a memorandum supporting the computation of the amount to be disgorged by each defendant.

Dated: New York, N. Y.
March 30 1976

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

FOOTNOTES

1 Consent judgments were entered against the following defendants on the dates indicated: Gerald Wolff (12/3/74); Michael Rekoon (12/18/74); Vincent Caccesse (3/21/75); Darold Myles Shirwo (5/2/75); Cabot Shaw, Inc. (5/8/75); John Feldman (5/23/75); and Beneficial Labs, Inc. (5/23/75). This action was dismissed with prejudice as against defendant Dorothy Drucker on June 18, 1975.

2 Specifically, Commonwealth, Drucker and Kleinman are charged with violating Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e and 77q(a); Sections 10(b), 15(c) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b), 78o(c) and 78q(a), and Rules 10b-5, 10b-6, 15c2-4, 17a-3 and 17a-4 promulgated thereunder, 17 C.F.R. §§ 240.10b-5, 10b-6, 15c2-4, 17a-3 and 17a-4; and Sections 17(a) and (d), 36(a), 37 and 48(a) of the Investment Company Act, 15 U.S.C. §§ 80a-17(a) and (d), 80a-35(a), 80a-36 and 80a-47(a), and Rule 17d-1 promulgated thereunder, 17 C.F.R. § 270.17d-1.

Drucker and Kleinman are also charged with violating Section 206(1) and (2) of the Investment Advisers Act ("Advisers Act"), 15 U.S.C. § 80b-6(1) and (2).

Defendant DK & B is charged with violating Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; Sections 17(a) and (d), 36(a), 37 and 48(a) of the Investment Company Act and Rule 17d-1 promulgated thereunder; and Section 206(1) and (2) of the Advisers Act.

Defendants Sharpe and Guttman are charged with violating Section 17(a) of the Securities Act; Sections 10(b) and 17(a) of the Exchange Act and Rules 10b-5, 17a-3 and 17a-4 promulgated thereunder.

Defendant Marlane Kleinman is charged with violating Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Jurisdiction is invoked under Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a); Section 27 of the Exchange Act, 15 U.S.C. § 78aa; Sections 36(a) and 44 of the Investment Company Act, 15 U.S.C. §§ 80a-35(a) and 80a-43; and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

We feel constrained to note at this point that the failure of the SEC to focus the factual and legal basis for this action by use of the umbrella statute, Section 10(b), has confused the presentation of the evidence, burdened this court and delayed decision.

3 17 C.F.R. § 230.251-263.

4 Although this letter was received as evidence at the preliminary injunction hearing, it becomes part of the trial record and may be considered in our findings. Rule 65(a)(2), Fed.R.Civ.P.

5 These charts do not reflect any transactions which may have occurred between broker-dealers who were not themselves market makers and who did not deal with market makers.

6 These documents were produced in the courtroom and were open to inspection by all counsel.

7 Wolff admitted that he had lied in several material aspects at two depositions conducted by the SEC. He claimed, however, that his trial testimony was true. After careful observation of this witness and in light of the other evidence produced at trial, we believe that his story at trial is truthful, notwithstanding his past perjury.

8 This finding that Arner participated in the "swap" transaction raises doubts about the bona fides of other transactions to which he was a party. For example, in light of Drucker's and Kleinman's use of nominee accounts to orchestrate the "success" of the Beneficial offering, Arner's subscription to 1,000 units appears questionable. Also, Arner participated in a number of trades during the period of manipulation of the Beneficial market by defendants. Arner's role throughout the relevant time period appears, at the least, to be suspicious. However, as he is not a defendant in this case, we need go no further.

9 See, e.g., SEC v. Resch-Cassin & Co., 362 F. Supp. 964 (S.D.N.Y. 1973).

10 A 100% stock dividend was declared in January 1973 thus increasing the funds' holdings to 44,200 shares of common stock and 3,000 warrants. Prior to the trading suspension of Beneficial, the Hedge Fund sold 3,600 shares of common stock, realizing a total of $41,625. The sale of the remaining securities to Ofinco, Inc. resulted in proceeds of $20,167.50. Thus, the total purchase price ($220,137.50), minus the total sale price ($41,625 + $20,167.50 = $61,792.50), equals the net aggregate loss of $158,345. The Vanguard Fund suffered a net loss of $66,325, and the Hedge Fund suffered a net loss of $92,020.

11 17 C.F.R. § 240.15c2-4(a)(2)(A).

12 17 C.F.R. § 230.251-263.

13 Regulation A provides that the SEC may suspend the exemption under certain circumstances, including the violation of the antifraud provisions of the Securities Act. An exercise of this power, which did not occur in this case, is not binding on the court's determination as to whether the exemption was in effect at any particular time. See United States v. McGuire, supra.

14 15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3.

15 15 U.S.C. § 80a-2(a)(3)(D).

16 15 U.S.C. § 80a-2(a)(3)(C).

17 The SEC has not, in its post-trial briefs, pressed its allegation that Section 17(d) of the Investment Company Act and Rule 17d-1 promulgated thereunder have been violated. In light of this, we will not consider this allegation.

18 Brown v. Bullock, 194 F. Supp. 207 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961).

19 314 F. Supp. at 194.

20 SEC v. Spectrum, Ltd., 489 F.2d 535, 541 (2d Cir. 1973).

21 SEC v. Rega, CCH Fed. Sec. L. Rep. [Current] ¶ 95,222, at 98,146 (S.D.N.Y. July 3, 1975). See also SEC v. Management Dynamics, Inc., 515 F.2d 801, 811 (2d Cir. 1975).

22 SEC v. Management Dynamics, Inc., supra, 515 F.2d at 808.

23 SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1100 (2d Cir. 1972).

24 SEC v. Management Dynamics, Inc., supra, 515 F.2d at 807.

25 SEC v. Universal Major Indus. Corp., CCH Fed. Sec. L. Rep. [Current] ¶ 95,229, at 98,214 (S.D.N.Y. July 14, 1975).

26 Marlane Kleinman also declined to appear at the trial. It has been held that a defendant's failure to testify in a case such as this warrants the inference that the testimony would have been unfavorable. See N. Sims Organ & Co. v. SEC, 293 F.2d 78, 80-81 (2d Cir. 1961), cert. denied, 368 U.S. 968 (1962); SEC v. D'Onifrio, CCH Fed. Sec. L. Rep.

[Current] ¶ 95,201, at 98,018 (S.D.N.Y. June 3, 1975); SEC v. Kelly Andrews & Bradley, Inc., 341 F. Supp. 1201, 1205 (S.D.N.Y. 1972).

27 SEC v. Shapiro, 349 F. Supp. 46, 55 (S.D.N.Y. 1972), aff'd, 494 F.2d 1301 (2d Cir. 1974).

28 See SEC v. Shapiro, supra, 349 F. Supp. at 55; SEC v. Manor Nursing Centers, Inc., supra, 458 F.2d at 1103; SEC v. Golconda Mining Co., 327 F. Supp. 257, 259 (S.D.N.Y. 1971).

29 SEC v. Shapiro, supra, 349 F. Supp. at 55.

OPINION, SEPTEMBER 29, 1976

U.S. DISTRICT COURT
FILED
SEP 29 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

COMMONWEALTH CHEMICAL SECURITIES, INC. et al.,

Defendants.

74 Civ. 1984-LFM

MEMORANDUM

45/80

MacMAHON, District Judge.

Having found that the defendants are liable for several violations of the federal securities laws in connection with the securities of Beneficial Labs, Inc. ("Beneficial"), and having determined that they must disgorge "all actual profits realized on the purchase and sale of Beneficial securities from December 20, 1971 to the close of business on March 2, 1973," the matter now before us is the fixing of the amounts of profits to be so disgorged. In response to our request, the parties have suggested four alternative methods of computation, each

based upon the charts of transactions introduced into evidence (Plaintiff's Exhibits 7, 9 and 10). We shall briefly describe each method.

The first method ("Method I"), suggested by the SEC, is a FIFO method (first in - first out) in which the purchase price of the first purchase is matched against the sale price of the first sale for each account found to have been used by the defendants; the second purchase against the second sale; and so forth. Two departures are made from this general format. First, if a purchase of securities occurs for a particular account and a sale of the same number of securities also occurs in that account on the same day, that purchase and sale are directly matched, regardless of whether this follows the regular FIFO treatment. Second, it appears that in several accounts the number of securities sold exceeds the number purchased. In order to fix a price basis for computing profits on such excess sales, the SEC has proposed a "borrowing" of securities from other accounts controlled by that defendant.

The SEC also proposes that each defendant be held responsible for the profits realized in all of his

controlled accounts. Furthermore, since Drucker and Kleinman controlled the Commonwealth trading account, they should each be responsible for one-half of the profits realized in that account. Commonwealth itself would not be responsible for any disgorgement.

The second suggested method ("Method II"), also proposed by the SEC, is the same FIFO treatment as in Method I, with the exception that there would be no "borrowing" between the accounts. All excess sales would simply be disregarded.

The defendants proposed an alternative method ("Method III") under which LIFO treatment (last in - last out) would be followed. Here, the proceeds of a sale transaction are matched against the price paid in the purchase transaction just preceding the sale. The following illustration is used to compare this method with a FIFO method:

Jan. 1 - X buys 2 shares at $1 each = $2.
Jan. 5 - X buys 2 shares at $5 each = $10.
Jan. 9 - X sells 2 shares at $10 each = $20.

Under a FIFO method, the profit on the sale transaction is $18 (first purchase price is matched against the first sale). Under a LIFO method, the profit equals $10 (the first sale is matched against the immediately preceding purchase).

The final method ("Method IV"), also proposed by the defendants, is a form of net computation. The defendants claim that they should not be charged with disgorging profits on transactions among themselves but only on transactions with the public. Under this method, the total proceeds from sales to the public (i.e., excluding sales to other defendants or other controlled accounts) is computed. Then, the total purchase price on purchases from the public is computed. If an account did not buy from the public, its purchase price basis on the sale would be considered to be zero. The following is an illustration:

Account A buys 2 shares from public at $1 each = $2.

Account B buys 2 shares from A at $5 each = $10.

Account B sells 2 shares to public at $10 each = $20.

Under Method IV, Account A would not be responsible for

any disgorgement, since it made no sales to the public. On Account B's sale to the public, the amount to be disgorged equals $20; since the shares were not purchased from the public, the purchase price is zero. Thus, on this series of transactions, the total to be disgorged under Method IV is $20. Under the other three methods, the total to be disgorged is $18; Account A has realized a profit of $8 ($10 - 2), and Account B has realized a profit of $10 ($20 - 10).

No other alternatives were suggested by the parties.

Mindful that our assessment of profits to be disgorged may not be punitive in nature, but also that it can only be a reasonable estimate based upon the evidence, we conclude that Method II is most equitable, for its use charges each defendant with disgorgement of all profits realized by any of his (or her) controlled accounts. The only exception to this is that Drucker and Kleinman will not be responsible for the disgorgement of profits realized in the Commonwealth trading account. The evidence at trial supports the inference that the

individual defendants directly profited from their controlled accounts. Commonwealth, however, was named as a separate defendant, and, as a corporation, it is a separate entity. While Drucker and Kleinman made all investment decisions for Commonwealth, there is no evidence that they used their own funds to purchase through Commonwealth, nor that they ever appropriated any proceeds received by Commonwealth on sale transactions.

There are various objections to the other methods. Method I is not acceptable because there is no evidence that any "borrowing" among accounts ever occurred. Method III is objectionable because LIFO treatment gives a defendant an inflated purchase price basis for his sale transaction. Method IV is inappropriate because a defendant who makes a profit on a sale to another defendant should justly be held accountable. Also, by limiting the sales to the public as the only transactions to be considered, the amount to be disgorged by Commonwealth is inflated, since most such sales were made from the trading account. We suspect that at this point Commonwealth may be judgment-proof.

Annexed are two tables. Table 1 contains the profits realized in each account under each of the proposed methods. Table 2 reflects the amounts to be disgorged by each defendant under each method. Those appearing under the column marked "Method II" on Table 2 are those which will be contained in the final order and judgment of permanent injunction and disgorgement of profits. These figures were computed by the SEC, except that, upon review, we found a few mathematical errors which we have corrected.

See final judgment of this date.

Dated: New York, N. Y.
September 29, 1976

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

TABLE 1

	I.	II.	III.	IV.
R. Drucker	$159,162.50	$ 76,912.50	$ 22,162.50	$136,350.00
Lori Rukasin	45,463.75	10,600.00	5,512.50	30,686.50
Dorothy Drucker	42,762.50	42,762.50	42,762.50	42,087.50
Dorothy Rukasin	3,525.00	1,875.00	1,875.00	1,900.00
R. Drucker c/f Susan	15,750.00	15,750.00	15,750.00	(250.00)
R. Drucker c/f Julie	15,450.00	15,450.00	15,450.00	(250.00)
R. Drucker c/f Cheryl	11,125.00	10,125.00	11,125.00	(262.50)
Nellie Pyles	250.00	250.00	250.00	-0-
Mary Sharpe	3,075.00	1,668.75	1,668.75	1,800.00
Pavel c/f Yitzchok	17,130.00	16,155.00	16,155.00	16,575.00
R. Synofsky	600.00	600.00	37.50	(13,212.50)
J. Kleinman	24,175.00	24,175.00	22,875.00	9,125.00
Marcia Klein	218.75	218.75	218.75	(3,300.00)
Commonwealth	227,178.75	188,998.75	373,918.50	344,637.50
	$565,866.25	$405,541.25	$529,761.00	$583,161.50

[Computed profits for each account found to have been used in the scheme. Each column represents a different method of computation, as explained in the foregoing memorandum.]

TABLE 2

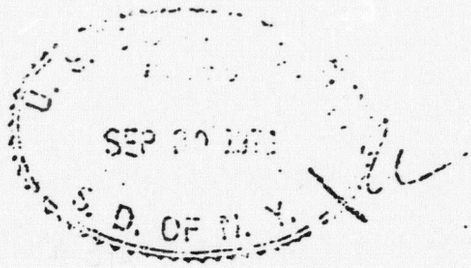
	I.	II.*	III.	IV.
R. Drucker	$293,238.75	$173,475.00	$114,637.50	$210,261.50
J. Kleinman	24,775.00	24,775.00	22,912.50	-0-
Mary Sharpe	3,325.00	1,918.75	1,918.75	1,800.00
Z. Guttman	17,130.00	16,155.00	16,155.00	16,575.00
Marlane Kleinman	218.75	218.75	218.75	-0-
Commonwealth	227,178.75	188,998.75	373,918.50	344,637.50
	$565,866.25	$405,541.25	$529,761.00	$573,274.00

[Amounts to be disgorged by each defendant, computed under each suggested method.]

* Suggested figures.

FINAL JUDGMENT

MacMahon, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- COMMONWEALTH CHEMICAL SECURITIES, INC. ROBERT DRUCKER JULIUS KLEINMAN DK & B MANAGEMENT, INC. MARY SHARPE ZOLTAN GUTTMAN a/k/a LOU GOODMAN MARLANE KLEINMAN a/k/a MARCIA KLEIN Defendants.	74 Civ. 1984 (LFM) FINAL JUDGMENT OF PERMANENT INJUNCTION AND ORDERS OF DISGORGEMENT AND APPOINTMENT OF ESCROW AGENT

Plaintiff Securities and Exchange Commission having filed its Complaint herein on May 8, 1974, and the Court having jurisdiction over the parties and of the subject matter of this action, and the defendants having appeared herein and a trial on the merits having been held on March 17, April 30, May 1 and May 2, 1975, and the Court having rendered its opinion, dated March 30, 1976, which constitutes the Court's Findings of Fact and Conclusions of Law, in accordance with Rule 52 of the Federal Rules of Civil

Procedure, in which it was found that permanent injunctive relief and ancillary relief in the form of a disgorgement of profits are appropriate against the defendants, [redacted] and the Court having rendered its memorandum decision, dated September 29, 1976, in which it fixed the amounts of profits to be disgorged, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

I. Defendants Commonwealth Chemical Securities, Inc. ("Commonwealth"), Robert Drucker ("Drucker"), Julius Kleinman ("Kleinman"), DK & B Management, Inc. ("DK & B"), Mary Sharpe ("Sharpe"), Zoltan Guttman a/k/a Lou Goodman ("Guttman"), and Marlane Kleinman a/k/a Marcia Klein, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5, by, directly or indirectly, making use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to employ any device, scheme or artifice to defraud, to engage in any transaction, practice or course of business which operates

or would operate as a fraud or deceit upon any purchaser, or to obtain money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the purchase, offer or sale of the common stock, warrants or units of Beneficial Labs, Inc. ("Beneficial") or any other securities.

II. Defendants Commonwealth, Drucker, and Kleinman, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-6 thereunder, 17 CFR 240.10b-6, by the use of any means or instrumentalities of interstate commerce, or of the mails, to, directly or indirectly, agree to participate or participate in a distribution of the common stock, warrants or units of Beneficial or any other securities, while, either alone or with one or more other persons, bidding for or purchasing for any account in which they have a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right, until after such persons have completed their participation in such distribution.

III. Defendants Commonwealth, Drucker, and Kleinman,

their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 15(c)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(2), and Rule 15c2-4 thereunder, 17 CFR 240.15c2-4, by the use of any means or instrumentalities of interstate commerce, or of the mails, directly or indirectly, in accepting any part of the sales price of any security being distributed, in any distribution of the common stock, warrants or units of Beneficial or any other securities, other than a firm committment underwriting, unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all or none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (a) the money or other consideration received is promptly deposited in a separate bank account as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (b) all such

funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

IV. Defendants Commonwealth, Drucker, Kleinman, Sharpe, and Guttman, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(a), and Rule 17a-3 thereunder, 17 CFR 240.17a-3, by failing to make and keep current those books and records relating to the business of a broker or dealer as are specified in Rule 17a-3.

V. Defendants Commonwealth, Drucker, Kleinman, and DK & B, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 17(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-17(a), by, directly or indirectly, in the absence of any applicable statutory exemption, while in the position of an affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in Sections 12(d)(3)(A) and (B) of the Investment Company Act of 1940), or an affiliated person of such person, promoter,

or principal underwriter, acting as principal:

(1) knowingly selling any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (a) securities of which the buyer is the issuer, (b) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (c) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof; or

(2) knowingly purchasing from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer).

Unless, however, an order exempting such transaction has been issued by the Commission.

VI. Defendants Commonwealth, Drucker, Kleinman, and DK & B, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 48(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-47(a), by, directly or indirectly, causing to be done any act or thing through or by means of any other person which would be unlawful for such person to do under the provisions of the Investment Company Act of 1940 or any rule, regulation, or order thereunder.

VII. Defendants Commonwealth, Drucker, Kleinman, and DK & B, pursuant to Section 36(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-35(a), be and they are hereby permanently enjoined from serving or acting (1) as an officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company or (2) as principal underwriter to any registered investment company if such registered company is an open-end company, unit investment trust, or a face-amount certificate company.

VIII. Defendants Commonwealth, Drucker, Kleinman, and DK & B, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Section 37 of the Investment Company Act of 1940, 15 U.S.C. 80a-36, by, directly or indirectly, stealing, unlawfully abstracting, unlawfully and willfully converting to their own use or to the use of another, or embezzling any of the moneys, funds, securities, credits, property, or assets of any registered investment company.

IX. Defendants Drucker, Kleinman, and DK & B, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, be and they are hereby permanently enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-6(1) and 80b-6(2), by

use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, in employing any device, scheme, or artifice to defraud any client or prospective client of an investment adviser or in engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client of an investment adviser.

IT IS FURTHER ORDERED that the defendants shall disgorge to an Escrow Agent appointed by this Court the following sums, plus interest to be computed at a rate of six percent (6%) per annum from March 2, 1973 to the date of payment:

Commonwealth Chemical Securities, Inc.	$188,998.75;
Robert Drucker	$173,475.00;
Julius Kleinman	$24,775.00;
Mary Sharpe	$1,918.75;
Zoltan Guttman	$16,155.00;
Marlane Kleinman	$218.75.

IT IS FURTHER ORDERED that John H. Morris, Esq., 12 East 41st Street, New York, N.Y. 10017 (telephone 212 532-4289), is hereby appointed as Escrow Agent and directed to post a bond satisfactory to the court in the amount of $1,000.00.

IT IS FURTHER ORDERED that the Escrow Agent is directed to use his best efforts in cooperation with, and the assistance of, the Securities and Exchange Commission, to:

(a) Receive and take immediate possession of the funds disgorged, or to be disgorged, by the defendants pursuant to this decree, and to hold such funds so received, or to be received, with interest thereon;

(b) With the aid of the plaintiff, Securities and Exchange Commission, to identify and locate those members of the public who invested in Beneficial Securities between December 20, 1971 and March 2, 1973 so that

thereafter an equitable plan may be presented to this Court for its approval in connection with the distribution of such funds among those members of the public investing in Beneficial Securities during the above period;

(c) Subject to the further order of this Court, to distribute such funds after deducting therefrom all administrative expenses and fees of the Escrow Agent as approved by this Court;

(d) Subject to the approval of this Court, to take all necessary steps, and, provided there are sufficient funds in the special account of the Escrow Agent for administrative expenses, to incur all reasonable expenses, including, but not limited to, the employment of counsel for the faithful performance of his duties.

IT IS FURTHER ORDERED that interim compensation shall be allowed to the Escrow Agent for his services in an amount or amounts to be fixed by the Court, and the final compensation to be allowed to the Escrow Agent for services shall be fixed by the Court after the Escrow Agent has fully rendered the services called for above.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enforcing and amending this decree and to issue such directions to the Escrow Agent as the Court shall, upon application or upon its own motion, deem necessary or appropriate for the accomplishment of the purposes of this order.

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

Dated: New York, N. Y.
September 29, 1976

JUDGMENT ENTERED: 9/30/76

Raymond F. Burghardt

CLERK

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff-Appellee, -against- COMMONWEALTH CHEMICAL SECURITIES, INC.; et al., Defendants-Appellants.	CASE NO. 74 Civ. 1984 JUDGE MacMahon CLERK'S CERTIFICATE

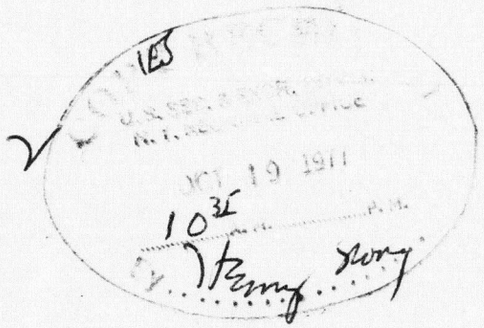
I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A - G, and the original filed papers numbered 1 thru 84, and exhibits A - F, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	PROCEEDINGS
March 21, 1975	Consent Judgment of Permanent Injunction as to Defendant Vincent Caccesse, Jr. and those persons in active concert with him.
October 15, 1976	Affidavit of Service of Final Judgment of Permanent Injunction, etc. on defendants on 10/13/76
October 15, 1976	Affidavit of Service on J. Kleinman, M. Kleinman, Commonwealth Cehm. Sec. and DK&B Menagement of Final Judgment of Permanent Injunction on 10/10/76

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this _____ day of _____, in the year of our Lord, One thousand ninehundred and seventy _____, and of the Independence of the United States the _____ year.

_____
Clerk of the Court

84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